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31/7/24

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION 2024

THE COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY

REPORT ON CONSIDERATION OF THE PUBLIC PARTICIPATION BILL, 2023
(NATIONAL ASSEMBLY BILL NO. 52 OF 2023)

JULY, 2024

	
THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 31 JUL 2024	DAY: WEDNESDAY
TABLED BY:	CHAIRPERSON, COMMITTEE ON PARLIAMENTARY BROADCASTING & LIBRARY
CLERK AT THE TABLE:	TRACEY CHERBY

Directorate of Audit, Appropriations
& General-Purpose Committees
National Assembly
NAIROBI



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LIST OF ABBREVIATIONS AND ACRONYMS

ACHPR	-	African Charter on Human and Peoples' Rights
CCSNH	-	Coast Civil Society Network for Human Rights
CEG	-	Centre for Economic Governance
CDRA	-	Caucus on Disability Rights Advocacy
CSPEN	-	Civil Society Parliamentary Engagement Network
COG	-	Council of Governors
CSOs	-	Civil Society Organizations
ICCPR-		International Covenant on Civil and Political Rights
KDCSWG	-	Kenya Devolution Civil Society Organization Working Group
NGO	-	Non-Governmental Organization
OAG	-	Office of The Attorney General
OHCHR	-	United Nations High Commissioner for Human Rights
SA	-	South Africa
UDPK	-	The United Disabled Persons of Kenya

ANNEXURES

Annexure 1: Report adoption schedule

Annexure 2: Minutes

Annexure 3: Advertisement inviting the public to submit memoranda on the Bill

Annexure 4: Letters inviting the stakeholders to submit memoranda

Annexure 5: Copies of the memoranda by stakeholders

CHAIRPERSON FOREWARD

This report contains the proceedings of the Committee on the Parliamentary Broadcasting and Library in its consideration of the Public Participation Bill (National Assembly Bill No. 52 of 2023). The Bill was published on 1st September, 2023, and went through the First Reading on 12th October 2023 and was thereafter referred to the Committee on Parliamentary Broadcasting and Library for consideration and reporting to the House, in accordance with Standing Order 127.

The Bill contains fourteen (14) clauses and seeks to provide a legal framework for effective public participation. The Bill further proposes to provide a mechanism to facilitate effective and coordinated public participation and to give effect to the Constitutional principles of public participation and participatory democracy as enunciated in Articles 1,10,35,69,118,174,184,196,201 and 232 of the Constitution.

Advertisements were placed in print media on Wednesday 25th October, 2023 and on Friday 26th January, 2024 inviting the public to submit their views by Monday 6th November, 2023 and further to attend public hearings on Thursday, 8th February 2024.

The Committee received submissions from twenty-three (23) stakeholders namely; *The National Treasury and Economic Planning, Office of the Attorney General, National Gender and Equality Commission, Centre for Economic Governance, University of Nairobi African Women Studies Research Centre, International Budget Partnership Kenya, Caucus On Disability Rights Advocacy and The United Disabled Persons of Kenya, Urai Trust, Coast Civil Society Network for Human Rights, Wecare Organization, Kenya Climate Change Working Group, Civil Society Parliamentary Engagement Network , Centre for Intellectual Property and Information Technology Law, Kenya Devolution Civil Society Organization Working Group, Kenya Law Reform Commission, Council of Governors, Joint Kiambu CSO's, Kenya Association of Manufacturers, Kenya Youth Federation, Health NGO Networks, Institute of Public Finance, Women Challenged to Challenge and Dr. M. J Okumu, an Advocate.*

The preeminent opinion of the stakeholders is that the Constitution of Kenya (2010) does not have a specific statute solely dedicated to public engagement. However, the Constitution does include provisions that cover various aspects of public engagement. The stakeholders also emphasized the importance of passing this Bill into law to ensure its conformity with the Constitution.

In considering the Bill, Members observed that there was no clear, cross-cutting, and multi-sectoral framework governing public participation in Kenya. This observation highlights a gap in the current system, as there is no comprehensive structure in place to ensure meaningful and systemic involvement of the public in decision-making processes. Members also noted the need for a structured framework for public participation by public institutions to minimize the risk of excluding the perspectives and concerns of the public.

Members asserted that inadequate structure in public participation has resulted in numerous government policies and legislation being declared unconstitutional by the courts. The Constitution of Kenya 2010 only highlights the principle of public participation without providing a clear framework. It neither specifies modalities nor does it outline the procedure

for public participation in the legislative process, leaving the normative contents to the discretion of the authority mandated to conduct public participation.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank the sponsor of the Bill, Hon. Daniel Epuyo Nanok, MP and all stakeholders who submitted their comments on the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and Secretariat who made useful contributions towards consideration of the Bill and production of this report.

On behalf of the Committee on Parliamentary Broadcasting and Library, in accordance with Standing Order 199(6), I am pleased and honoured to present to this House the Report of the Committee on consideration of the Public Participation Bill, 2023 (National Assembly Bill No. 52 of 2023).

It is my pleasure to report that the Committee has considered the Public Participation Bill (National Assembly Bill No. 52 of 2023) and has the honour to report back to the National Assembly with the recommendation that the **Bill be approved with amendments** as proposed by the Committee

Hon. Daniel Epuyo Nanok, CBS, MP – Chairperson
Committee on Parliamentary Broadcasting and Library

PART ONE

1 PREFACE

1.1 MANDATE OF THE COMMITTEE

1. The Committee on Parliamentary Broadcasting and Library is established under Standing Order 212D and is mandated to; -

- (i) consider and report on all matters relating to broadcasting of the proceedings of the House;
- (ii) *advise the House on matters related to public participation;*
- (iii) make reports and recommendations to the House, including proposed legislation on matters relating to broadcasting of House proceedings;
- (iv) recommend to and advise the House on matters related to the provision of library, publications, and research services in Parliament, including improvement of the library and research services; and
- (v) assist Members in utilizing the facilities provided by the library and research services, including the use of information and communication technology.

1.2 COMMITTEE MEMBERSHIP

2. The Committee on Parliamentary Broadcasting and Library was constituted by the House on 27th October 2022 and comprises the following twenty-one Members; -

Chairperson

Hon. Daniel Epuyo Nanok, M.P.
Turkana West Constituency

United Democratic Alliance Party

Vice- Chairperson

Hon. (Eng.) John Kiragu Chege, M.P.
Limuru Constituency

United Democratic Alliance Party

Hon. Mohamed Mohamed Ali, MP
Nyali Constituency
United Democratic Alliance Party

Hon. Raphael Sauti Wanjala, M.P.
Budalangi Constituency
Orange Democratic Movement Party

Hon. James Gakuya Mwangi, M.P.
Embakasi North Constituency
United Democratic Alliance Party

The Hon. Moses Malulu Injendi, M.P.
Malava Constituency
Amani National Congress Party

Hon. John Waluke Koyi, M.P.
Sirisia Constituency
Jubilee Party

Hon. Timothy Wanyonyi Wetangula, M.P.
Westlands Constituency
Orange Democratic Movement Party
Jubilee Party

Hon. Oscar Kipchumba Sudi, M.P.
Kapseret Constituency
United Democratic Alliance Party

Hon. George Gachagua, M.P.
Ndaragwa Constituency
United Democratic Alliance Party

Hon. Rindikiri Mugambi Murwithania, M.P.
Buuri Constituency
United Democratic Alliance Party

Hon. (Dr.) John Ariko Namoit, M.P.
Turkana South Constituency
Orange Democratic Movement Party

Hon. Adams Kipsanai Korir, M.P.
Keiyo North Constituency
United Democratic Alliance Party

Hon. Josses Kiptoo Lelmengit, M.P.
Emgwen Constituency
United Democratic Alliance Party

Hon. Anthony Kenga Mupe, M.P.
Rabai Constituency
Pamoja African Alliance Party

Hon. Kitilai Ole Ntutu, M.P.
Narok South Constituency
Independent

Hon. Abdirahman Mohamed Abdi, M.P.
Lafey Constituency

Hon. Phelix Odiwuor Khodhe, M.P.

Langata Constituency
Orange Democratic Movement Party

Hon. Suzanne Ndunge Kiamba, M.P.
Makueni Constituency

Wiper Democratic Movement Party

Hon. Talib Ahmed Abubakar, MP
Nominated

Wiper Democratic Movement Party

Hon. Charles Onchoke Mamwacha, M.P.
Bonchari Constituency

United Progressive Alliance Party

1.3 COMMITTEE SECRETARIAT

3. The secretariat supporting the Committee comprises the following staff; -

Ms. Ella Kendi

Clerk Assistant I- Team Leader

Ms. Fidlizah Mwagogo
Clerk Assistant III

Ms. Noelle Chelagat
Media Relations Officer II

Ms. Mercy Wanyonyi
Senior Legal Counsel

Mr. Jarred Onyancha
Public Relations Officer III

Mr. Silas Lomutur
Research Officer III

Ms. Jacinta Maru
Sergeant-At-Arms

PART TWO

2 BACKGROUND OF THE PUBLIC PARTICIPATION BILL

2.1 INTRODUCTION

4. Public participation is when members of society are involved in the decision-making process by public entities. Legislative bodies are required to include the public or a representative group in their decision-making. Public participation in the legislative process allows the public to influence the decisions made by lawmakers. The importance of public involvement in legislative processes is universally recognized in constitutional democracies.
5. The main challenges in conducting effective public participation in Kenya include the lack of an overarching public participation policy and legislative framework, ineffective communication, lack of interest from citizens, limited civic education, inadequate funding, inadequate feedback mechanisms, and a focus only on compliance.

2.2 SITUATIONAL ANALYSIS

6. The 2010 Constitution establishes public participation as one of the national values and principles of governance, as an expression of the sovereignty of the people¹. These values and principles are binding on all state organs and individuals when enacting, applying, or implementing any law. Article 10(2)(a) of the Constitution of Kenya, 2010, encapsulates the national values and principles of governance, including the participation of the people.
7. Public participation is a cornerstone of Kenya's democracy, playing a significant role in the legislative and policy functions of both national and county governments². It is essential to facilitate public participation to ensure the legitimacy and credibility of decisions and policies made by public entities. By providing meaningful opportunities for the public to express their views and opinions in decision-making, governments at all levels can incorporate diverse perspectives and address the interests and needs of citizens. Despite its importance, engaging citizens in government processes poses challenges for Kenya's executive and legislature. Issues such as institutional corruption and the disconnect between state organs and citizens often impede meaningful public participation, eroding trust in the government and undermining confidence in decision-making processes.³
8. Another challenge lies in distinguishing public participation from other forms of engagement, such as information sharing or consultation. Genuine public participation requires active engagement and consideration of public input in decision-making, going beyond mere information provision or consultation. Efforts aimed at facilitating public participation should focus on meaningful engagement rather than superficial activities.

¹ *Mui Coal v Ministry of Energy* [2015] eKLR.

² *Robert Gakuru v Governor Kiambu* [2014] eKLR.

³

Mui Coal v Ministry of Energy [2015] eKLR.

When public participation is reduced to rubber-stamping exercises, it undermines the set out democratic principles it is meant to uphold.

9. Presently, the existing legal framework and jurisprudence in Kenya have not fully addressed the shortcomings in public participation mechanisms. It is imperative to strengthen these frameworks to ensure that public participation is not merely symbolic but offers a genuine opportunity for citizens to influence government decisions and policies.
10. Both the National and County Governments should establish clear guidelines and processes to ensure consistent and robust public participation, irrespective of the specific context or issues under consideration.
11. The existing spaces and modalities for public participation tend to favour specific stakeholders, limiting access to only certain groups. Those responsible for creating these spaces often dictate the rules and procedures of public participation.
12. Moreover, public participation in government processes is structured as invited spaces, where the issues, timing, format, venue, agenda, and process are defined by the state rather than the people. State organs have shown tendencies to centralize decision-making, marginalizing citizens as mere spectators and impeding their active involvement in government processes.⁴

2.3 COMPARATIVE ANALYSIS

13. **In South Africa**, the policy framework provides a foundation for public participation in democratic governance. The National Assembly, Provincial Legislatures, and Municipal Councils are required to involve the public in their processes. The SA Constitution makes provision for public participation. The Department of Public Service and Administration issues frameworks and guidelines for public participation, offering practical guidance. The government also provides information, education, and opportunities for the public to get involved. The establishment of an education office and the use of the South African Broadcasting Corporation to inform the public about parliamentary activities reach a wide audience. Workshops and conferences in rural areas demonstrate a commitment to inclusivity and ensuring that all voices are heard. Additionally, allowing electronic submissions leverages on technology and enhances accessibility and convenience for public participation in the legislative process.⁵
14. **In Canada**, the government recognizes the importance of engaging citizens and civil society in governance to enhance the legitimacy of public institutions, improve public policy quality, and foster responsive public services. The Department of Justice has **policies and guidelines** for public participation that shape the department's activities. The policy

⁴ *John Muraya Mwangi & 501 Others v Minister for State for Provincial Administration & Internal Security & 4 Others* [2014] eKLR.

⁵ Public Participation Framework for the South African Legislative Sector, <https://dokumen.tips/documents/public-participation-framework-for-the-south-african-salsgovzadocspubspfpdf.html?page=1>

underscores the commitment of the Department of Justice to involve Canadians in the development of legislation, policies, programs, and services through transparent, accessible, and accountable processes. It aims to ensure that public participation is supported by factual information and inclusive of Canada's diversity⁶. While Canada's Parliament lacks explicit legislation mandating public participation, the institution has established a policy on public engagement and employs various mechanisms to facilitate it.

15. **In Scotland**, the Citizens' Participation and Public Petitions Committee was established during the sixth session of the Scottish Parliament. The committee's mandate includes citizen participation and post-legislative scrutiny. They utilise deliberative democracy methods such as Citizen's Assemblies to include people's voices.⁷ In 2022, the committee launched an inquiry to ensure people's voices are heard in the Parliament's work. They use media outlets, documentaries, and short films to highlight Parliament's successes and real-life stories of engagement in order to improve public perception and trust. Positive interactions with Parliament are encouraged to be shared through various media platforms. This includes asking for public input on '**Your Priorities**' on the Scottish Parliament website, carrying out further evidence-taking and fact-finding, and creating a minimum standard of response for engagement. This standard includes initial acknowledgement, follow-up on the number of responses and the outcome of the inquiry, and providing more information through signposting.

⁶ Policy Statement and Guidelines for Public Participation - Department of Justice, <https://www.justice.gc.ca/eng/cons/pol.html>

⁷ Public Participation in the Scottish Parliament, <https://bprede.parliament.scot/published/CPPP/2022/12/16/741396a1-57a0-4a7b-aa80-390ad171287a-2/CPPPS062022R2.pdf>

PART THREE

3 OVERVIEW OF THE PUBLIC PARTICIPATION BILL (NATIONAL ASSEMBLY BILL NO. 52 OF 2023)

3.1 INTRODUCTION

16. Kenya is a constitutional democracy where the sovereignty of the people is a fundamental principle as articulated in Article 1 of the Constitution of Kenya 2010. This sovereignty can be exercised either directly or indirectly through elected representatives. The Kenyan governance system is primarily representative, with legislative powers held by the Parliament at the national level and county assemblies at the county level. Article 118(2) provides the public access and participation by allowing Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its committees.
17. Kenya has ratified various treaties and conventions governing public participation. For instance, Article 25(c) of the ICCPR (1966) entitles every citizen to the right and opportunity to take part in the conduct of public affairs, either directly or through freely chosen representatives⁸ (ACHPR, 1981). ICCPR (1966) requires states to take positive measures to provide citizens with appropriate opportunities to participate in legislative activities without any distinction or unreasonable restrictions.). Further, Article 3(g) of the Constitutive Act objectively promotes democratic principles and institutions, popular participation, and good governance.⁹
18. The Bill therefore seeks to provide a legal framework for effective public participation as a mechanism to facilitate effective and coordinated public participation.

3.2 REVIEW OF THE BILL

19. The Bill has fourteen (14) clauses and has the following provisions.

Part I: Preliminary

20. Clause 1 to 3 of the Bill provide for the preliminary provisions, that is the short title, interpretation of the terms as used in the Bill, objects and applications of the Bill.
21. The clauses provide that the Bill shall apply to all public offices, state organs and all persons in Kenya whenever any of them applies or interprets the Constitution or any written law; or makes or implements any public policy decisions.
22. Clause 4 provides for objects of the Act which is to enhance, promote and facilitate public participation in governance processes and in particular to give effect to the principles of public participation as provided for in the Constitution; promote democracy and participation of the people in accordance with Article 10 of the Constitution; promote

⁸ International Covenant on Civil and Political Rights, 1996,
<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf>

⁹ Constitutive Act of The
African Union, https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf

transparency and accountability in decision making; and enhance public awareness and promote public participation in governance processes.

Part II: Public Participation

23. Clause 5 provides for the scope of public participation. Each state organ or public office is required to facilitate public participation on matters relating to formulation of policies; budgeting and financial management; law making processes; and or any other matter as may be prescribed in the regulations.
24. Clause 6 provides for the conduct of public participation. A state organ or public office is required to provide reasonable and meaningful opportunities for public participation. In determining what is reasonable, the state organ or public office shall take into consideration the nature of legislation or decision to be made; importance of the legislation or decision; impact of the legislation or decision on the public; need for inclusive and effective representation; and integrity and transparency of the process.
25. Clause 7 provides for the rights of a member of the public in public participation. A member of the public or an entity likely to be affected by a decision shall have the right to participate in the decision-making processes and may attend a public participation forum; attend a public participation forum and make presentations either orally or by way of written submission to a state organ or public office on the subject matter as may be determined; or submit a written submission to the state organ or public office conducting public participation.
26. Clause 8 provides for the determination of the responsible authority. This section determines what body is the responsible authority for the purposes of the Act: (a) The relevant committee, in each House, responsible for rules and procedure shall be the responsible authority for Parliament; (b) The Chief Justice shall be the responsible authority for the Judiciary; (c) The secretary or chief executive officer shall be the responsible authority for an independent commission or office; (d) Cabinet Secretaries shall be the responsible authorities for Government ministries and state corporations or any other public body under their respective ministries; (e) The county assembly committee responsible for rules and procedure shall be the responsible authority for a county assembly; and (f) The County Secretary shall be the responsible authority for a county executive.
27. Clause 9 provides for the public participation guidelines. The responsible authority is required to develop guidelines for undertaking public participation in the respective institution. The guidelines developed by a responsible authority are to include the requirements set out in the general guidelines for public participation in the Schedule and may include specific requirements beyond what is required under the general guidelines and provide for the manner in which any requirements of the specific or general guidelines may be satisfied. The Bill further specifies that until a responsible authority has developed specific guidelines relevant to the respective public body, the general guidelines on public participation under the Act shall apply as though they were the specific guidelines developed by the responsible authority. Additionally, the Statutory Instruments Act shall

apply to the guidelines developed by a responsible authority. Parliament and each county assembly shall incorporate guidelines for undertaking public participation in their Standing Orders and ensure they are accessible to the public

28. Clause 10 provides for the publication of the specific public participation guidelines. Each responsible authority, except Parliament and the county assemblies, is required to publish the specific guidelines on public participation developed in the Gazette within six months of the commencement of the Act.

Part III: Miscellaneous Provisions

29. Clause 11 to 13 provide for financial provisions, reports and general penalty. Clause 11 provides that a state organ or public office shall provide the necessary resources and shall include in its annual estimates' provisions for expenses for purposes of undertaking public participation.
30. Clause 12 provides that each state organ or public office shall prepare an annual report on public participation at the end of each financial year containing a description of any complaints made against the institution in respect of public participation, the action taken and the period within which the complaint was addressed; and any other information that the responsible authority may consider relevant.
31. Clause 13 provides for a general penalty. A person who contravenes a provision of the Act commits an offence and shall upon conviction, be liable to a fine not exceeding three hundred thousand shillings or imprisonment for a term not exceeding six months, or to both.

Part IV: Provisions and Delegated Powers

32. Clause 14 provides for regulations. The Cabinet Secretary may make regulations for specifying additional institutions not specified under the Act and any other matter required to be prescribed under this Act.

Schedule to the Bill

33. The Schedule to the Bill provides for the general public participation guidelines. A state organ or public office shall, before conducting public participation on a particular matter identify the purpose of the public participation; urgency of the matter; nature of legislation or decision to be made; importance of the legislation or decision; the impact of the legislation or decision on the public; need for inclusive and effective representation; integrity and transparency of the process; the number and circumstances of interested parties and affected parties; and the ability of the targeted participants to access the necessary information and the venue.
34. A state organ or public office is required to: give the public adequate notice to make their input on the issue and to establish mechanisms to enable the widest reach which may include publication of notices in television stations; information communication

technology centers; websites; community radio stations; public meetings; newspapers; or any other media that may be prescribed; ensure that the public and entities have fair and equal access to the public participation process and the opportunity to give views on the intended decision; publish and distribute the documents for consideration as widely as possible using the available means and ensure that the documents are published and distributed in a language and form that can be used by the public; ensure that all responses are considered and analyzed ; the final decision is made available to the public, including the reasons for the decisions taken; and the disclosure of all relevant information for the public to understand and evaluate the decision made; undertake and encourage actions that build trust and credibility in the public participation process among all the participants; and ensure that all participants, including the representatives of the responsible authority and all respondents, are courteous, respectful and civil in the public participation processes.

PART FOUR

4 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

35. Following the placement of advertisements in the print media on Wednesday 25th, October 2023 and on Friday 26th January, 2024 inviting the public to submit their memoranda and notifying them of the public hearing on the Bill pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the following stakeholders submitted their views on the Bill

- i) The National Treasury;
- ii) Office of the Attorney General National;
- iii) Gender and Equality Commission;
- iv) Council of Governors;
- v) Centre for Economic Governance;
- vi) African Women Studies Research Centre;
- vii) International Budget Partnership Kenya;
- viii) United Disabled Persons of Kenya;
- ix) Urai Trust;
- x) Coast Civil Society Network for Human Rights;
- xi) Wecare Organization;
- xii) Kenya Climate Change Working Group;
- xiii) Civil Society Parliamentary Engagement Network (CSPEN);
- xiv) Centre for Intellectual Property and Information Technology Law;
- xv) Kenya Devolution Civil Society Organization Working Group;
- xvi) Kenya Association of Manufacturers;

- xvii) Kenya Youth Federation;
- xviii) Health NGO Networks;
- xix) Institute of Public Finance;
- xx) Women challenged to challenge; and
- xxi) Dr. M. J Okumu, an Advocate.

36. The stakeholders submitted as follows:

4.1 THE NATIONAL TREASURY AND ECONOMIC PLANNING

Clause 1

37. The National Treasury in their submissions to the Committee proposed that the long title of the Bill be amended by adding Article 69 (1) (d) to contain all constitutional provisions on public participation.

Committee's observation/ Recommendation

The proposal was adopted by the Committee as it seeks to ensure inclusion of all constitutional provisions that make mention of public participation.

Clause 4

38. The National Treasury in their submissions proposed that Clause 4(a) of the Bill be amended by providing for public participation in matters to do with the environment as provided for in Article 69 (1) (d) of the Constitution, noting that adding Article 69(1)(d) it promotes public participation in environmental matters.

Committee's observation/ Recommendation

The proposal was adopted by the Committee as it allows for public participation on matters concerning the environment.

Clause 6

39. The National Treasury further suggested that sub-clause 6(1) be amended by providing a concise definition of the term “meaningful” the definition should be defined to provide a threshold that provides for clarity purposes. They further proposed that sub-clause 6(2) of the Bill be amended by inserting the word “office” after “public” so that the phrase reads “State Organ and Public office”.

Committee's observation/ Recommendation

The proposal was agreed to for the purpose of clarity

Clause 8

40. The National Treasury asserted that there is a need to include Accounting Officers of the different agencies and parastatals in Government to be responsible authorities. The reason given is that public participation requires funding.

Committee's observation/ Recommendation

The Committee disagreed with the proposal as the Attorney General is the responsible authority as is provided for in the approved Public Participation Policy.

Clause 9(4)

41. The National Treasury further submitted that clause (9)(4) of the Bill be introduced to provide as follows- "where there is a conflict between the provisions of this Act and any other written law, the provisions of this Act shall prevail"

Committee's Observation/ Recommendation

The proposal was agreed to as it was seeking to provide for order and alignment of the county specific law with the national law.

SCHEDULE

Paragraph 2 Notice.

42. The National Treasury was of the view that the words "adequate notice" in paragraph 2(1) be deleted and be replaced with at least twenty-one (21) days' notice.

Committee's Observation/ Recommendation

The committee was of the view that dictating the exact number of days would be too prescriptive and limiting.

43. Additionally, the National Treasury proposed that the words "social media handles" be added in paragraph 2(2) so as to be able to reach the youth.

Committee's Observation/ Recommendation

The Committee adopted the proposal as it sought to ensure wide coverage and reach on matters that concerned the Public.

Paragraph 4

44. The National Treasury further submitted that the Bill be amended by deleting the words "adequate notice" and substituting the same with "at least twenty-one-day notice".

Committee's Observation/ Recommendation

The proposal was disagreed with as dictating the exact number of days would be restrictive owing to the fact that matters of public participation vary from one sector to another and different time frames may then be required.

Paragraph 5. (1)

45. The National Treasury finally submitted that Paragraph 5(1) (a), be amended to include social media.

Committee's Observation/ Recommendation

The Committee adopted the proposal as it would ensure wide coverage/ reach and easier accessibility of the information.

4.2 OFFICE OF THE ATTORNEY GENERAL (OAG)

Clause 2

46. The OAG proposed revision the definition of "Cabinet Secretary", to align with the Kenya Public Participation Policy which identifies the Office of the Attorney General as the lead agency in implementation of the Policy and in collaboration with the Ministry responsible for devolution. The AOG is mandated to establish a multi sectoral coordination framework for ensuring effective public participation. As such the amendment improves the description of that term leaving no ambiguity.
47. The OAG further suggested that the bill be amended in the definition of the word Cabinet Secretary as substituting therefore the new definition *"The Cabinet Secretary means the Attorney General. As such specifically clarify purposes as there is no Minister for Justice.*

Committee's Observation/ Recommendation

The proposal was agreed to as it clarifies and points out who the designated responsible office/ authority is.

48. The OAG further submitted that the term public participation be amended as follows- *"Public participation means the process by which citizens, as individuals, groups or communities take part in the conduct of public affairs, interact with the state and other non-state actors to influence decision, policies, programs, legislations, and provide oversight in service delivery development and other matters concerning their governance and public interest either directly or indirectly through freely chosen representatives. This definition is what is provided for in the draft Public Participation Policy.*

Committee's Observation/ Recommendation

The Committee disagreed with the proposal as the definition provided for in the Bill was adequate.

Insertion of New Definitions

49. The Office of the OAG further proposed that the Bill be amended by providing for the following new definitions be inserted in the bill in the proper sequence:

“individual” means any citizen or resident of the country, regardless of age, gender, ethnicity, social status or any other differentiating factor;

“groups of individuals” includes but not limited to, communities, associations, organizations and social movements; and

“legal person” includes an entity recognized by law with legal rights and responsibilities such as a company, a non-profit organization and a trade union.

Committee’s Observation/ Recommendation

The Committee disagreed with the proposal

Clause 9 (1)

50. The Office of the OAG submitted that clause 9 be amended to provide for responsible authorities to develop **operational or administrative guidelines**. As such the responsibilities of the Cabinet Secretary under clause 14 and those of responsible authorities under clause 9 ought to be harmonized.

Committee’s Observation/ Recommendation

The proposal was agreed to for the purpose of harmonizing the responsibilities of Cabinet Secretary under clause 14 and those of responsible authorities under clause 9.

Clause 12 Reports.

51. Additionally, the Office of the OAG further submitted that the Bill be amended in the section for annual reports by inserting a new paragraph immediately after paragraph (a)-(aa) information on—

- (i) how the public is informed about opportunities to participate with respect to public participation;
- (ii) public participation budget;
- (iii) disaggregated participation data; and modalities of public participation engagement

On their end this provides specific information that the authorities are to provide to Parliament and County Assemblies.

Committee’s Observation/ Recommendation

The Committee disagreed with the proposal indicating that specifying the information would be relevant in the Policy as opposed to providing for the same in a law.

Clause 13 Penalty

52. The OAG made a proposal for the amendment of the Bill to provide a part for dispute resolution as follows- *13A. The Attorney –General shall, in consultation with institutions mandated to handle public complaints, promote alternative dispute resolution methods in the resolution of complaints relating to public participation. To provide for the use of alternative dispute resolution mechanisms where conflicts arise in public participation.*

Committee’s Observation/ Recommendation

The Committee agreed to the proposal as this would provide mechanisms for Dispute resolution in the parlance of Public Participation which had not been provided for in the Bill. The proposal was agreed for the purpose of establishing an office with clear roles and functions.

4.3 NATIONAL GENDER AND EQUALITY COMMISSION

Clause 2

53. The NGEC proposed interpretation of the new terms as follows: “Access” includes access to Information and services, fittings, amenities, build environment, and infrastructure; “Access to information” includes braille, sign language, large texts, websites, and local language; and “Specific guidelines” means the specific public participation guideline developed by a responsible authority under section 8. This is for clarity purposes.

Committee Observation/ Recommendation

The proposal was agreed to for the purpose of inclusivity of persons with disability and clarity of the terms.

54. The NGEC further proposed introduction of new Part V on County Legislation as follows;
County Legislation

A county shall enact county specific legislation generally for the better carrying out of the purposes and provisions of this Act

Committee observation/ Recommendation

The proposal was agreed upon as the national law to be overarching and counties were at liberty to formulate their own specific laws.

SCHEDULE

Paragraph (2)- notice

55. The NGEC submitted that paragraph 2 be amended by inserting the following additional items under Notice Requirements:

- (g) Religious gatherings
- (h). Notice Boards
- (i). Social media
- (j). Markets

They noted that the items are the most popular mechanisms of communication for the youth and the citizens at the grass roots.

Committee observations/ Recommendations

It was agreed to adopt the proposal as these are avenues for wide circulation of information.

Paragraph 3

56. The NGEC sought to have an amendment to paragraph (2) to read as follows; “A state organ or public office shall take all necessary measures to ensure the participation of persons with disabilities **and all various categories of vulnerabilities** in the public participation processes.” They noted that the proposal by the Commission is premised on the fact that there are more vulnerable special interest groups that also need reasonable accommodation including the elderly and expectant mothers among others.
57. NGEC further suggested that paragraph (3) of the Schedule to the Bill be amended to provide for the option of making sign language available to persons with disabilities.
58. Additionally, NGEC opined that paragraph 3 of the Schedule to the Bill ought to be amended by inserting an additional sub-paragraph 4 that will ensure that venues or places for holding public participation foras are easily accessible to all without any difficulties or limitations.

Committee’s Observation/ Recommendation

The proposal was adopted by the Committee for inclusivity purposes of persons with disabilities.

Paragraph 4 -Adequate time

59. The NGEC also suggested to amend paragraph 4 of the Schedule to the Bill to specify the timelines for **notice as ten days**. In a bid to ensure that the Members of the public have adequate time to submit meaningfully to the matters requiring participation.

Committee’s Observation/Recommendation

The Committee disagreed with the proposal citing that indicating the exact number of days in the law will be prescriptive as circumstances vary from time to time.

Access to information for public participation

60. The NGEC in their submissions proposed an amendment to paragraph 5(1)(a) of the Schedule to the Bill as follows-
- a) **paragraph 5(1)(a) be amended to read as follows;**
publish and distribute the documents for consideration as widely as possible using the available means, including providing hard copies, radio and television advertisements.

websites or community radio announcements and if necessary, educate and sensitise the public on the subject matter of the public participation;

On their end they submitted that this was going to equip the public with the necessary information that will enable them to participate meaningfully.

Committee's observation/ Recommendation

The Committee agreed with the proposal as it ensures that the public is sensitized on the subject matter of the public participation where necessary.

Processing of responses

61. The NGEC further submitted that paragraph 6 (b) of the Schedule to the Bill be amended to read as follows; *"the final decision is made available to the public including the reasons for the decisions taken including the rejection of the submissions made."* The basis is to communicate the reasons for the rejection of the proposals and minimise cases of complaints by the participants.

Committee Observations/ Recommendations

This was disagreed with as the practicability of this proposal at the implementation phase may not be tenable.

4.4 CENTRE FOR ECONOMIC GOVERNANCE(CEG)

Clause 2 Interpretation

62. The CEG submitted that the definition of "public participation" be amended to read as *"Public participation means the process through which the public is engaged in understanding and contributing to decision making processes by state organs and public offices at the policy making, law making, implementation and audit level"*. It was further submitted that this definition introduces public participation in audit processes aligning it to ongoing practice at the Office of the Auditor General and its specific department on social audits/social accountability.

Committee's observation /Recommendation

The Committee disagreed with the proposal noting that involvement of the public in the auditing process is an idea that can be realized progressively due to costly budgetary constraints.

Clause 12 Reports

63. The CEG proposed that the Bill be amended in Clause 12(4) as follows—*"(b) information on the processes and the achievements of the public participation including number of forums and the outcomes."* On their end they submitted that the public participation report should have a summary of the outcomes of the public participation.

Committee's observation/recommendation

The proposal was disagreed upon by the Committee but proposed an amendment that would cater for their proposal

SCHEDULE

64. The CEG further submitted that section 1 (b) be amended to remove the words “urgency of the matter”. CEG noted that the urgency of the matter will be subject to abuse by a state organ or public office may delay a particular matter and fail to conduct public participation arguing it is urgent.

Committee Observation/recommendation

The Committee disagreed with the proposal citing that it's upon the state organ to determine what matter qualifies to be urgent.

SCHEDULE

65. CEG further suggested that clause 2(3) of the Bill be amended by inserting a new paragraph immediately after paragraph (e)) on feedback as follows:

A public participation programme under subparagraph (1) shall clearly identify—(f) **“Feedback mechanisms to the public on the decisions made.”**

In their justification, they submitted that public offices and state organs should have clear guidelines on feedback mechanisms after every public participation engagement.

Committee's Observation/ Recommendation

The proposal was disagreed with noting that providing feedback on each and every single decision made may not be practically possible.

SCHEDULE

66. CEG submitted that a new clause be inserted in the Bill to address Grievances/Complaints redress mechanisms (GRM/CRM) (or make reference to any law on petition) as follows-

A state organ or public body shall provide a complaints redress mechanism that ensures -

- a) timely and comprehensive redress of the problems identified by the public throughout the public participation processes.
- b) all complaints are comprehensively reported and well documented, a mutually agreeable resolution to both parties and provide alternative resolution mechanisms in case one party disagrees with the proposed resolution.

In their justification they submitted that many public participation processes also lead to new petitions.

Committee's observation/ Recommendation

The Committee agreed to the proposal justifying that there was need for a complaints redress mechanism **that had not been provided for in the Bill.**

4.5 UNIVERSITY OF NAIROBI AFRICAN WOMEN STUDIES RESEARCH CENTRE

Clause 2

67. The stakeholder proposed the amendment of the definition of “public participation” to read as follows; “Public participation means the qualitative and quantitative process through which the public are meaningfully engaged in understanding and contributing to decision-making processes by state organs and public offices at the policy making, law making and implementation level. This is to enhance a meaningful and inclusive public participation process.”

Committee’s Observation/Recommendation

The Committee disagreed with the proposal citing the plausible difficulty that may be encountered in a bid to measure what is qualitative and quantitative in the public participation process. The words qualitative and quantitative would lean towards data processing and therefore not relevant in the process.

68. They further proposed insertion of a new definition of meaningful participation “Meaningful Public Participation’ means a process that deliberately aims at engaging members of the public in a purposeful and real process that seeks their input to inform a public decision”. This is a guide to people undertaking the public participation to be more engaging and involve the members of the public. They further proposed a new object to give a prescribed legal framework for public participation that is meaningful and purposeful for the citizens of Kenya

Committee observation/Recommendation

The proposal was disagreed upon as it is difficult to measure meaningful public participation process.

SCHEDULE

Factors to be considered

69. On factors to be considered, the stakeholder proposed the addition of a sub-clause to read
- (i) ability of the targeted participants to access timely and relevant information
 - (ii) inclusivity is important -equal access to opportunities to participate
 - (iii) venue of the public participation

They justified that this is to make it mandatory for the institutions to ensure the information is easily accessible and ensure that the venues are accessible to the public

Committee's observation/ Recommendation

The Committee adopted the proposal citing that this would ensure easier accessibility of the information.

Notice

70. It was proposed that a state organ or public office should give the public adequate notice, which shall not be less than 14 working days to make their input into the issue.

Committee observation/recommendation

The Committee disagreed with the proposal indicating that specifying the exact no of days would be restrictive.

Processing of responses

71. The stakeholder further proposed a new paragraph (d) to read as follows “an analysis of the responses obtained to ensure that the majority views are incorporated” This will help in making sure the entire process is meaningful.

Committee observation/ Recommendation

The proposal was disagreed upon as it will not be tenable to analyze the responses.

4.6 INTERNATIONAL BUDGET PARTNERSHIP KENYA**General recommendations—Right to Public participation**

72. The Partnership suggested that Clause 7 (1) of Part II of the Bill which provides that any member of the public or entity likely to be affected by a decision should have the right to participate in the decision-making process gives life to the principles of public participation found in Articles 1, 10, 35, 69, 118, 174, 184, 196, 201, and 232 of the Constitution of Kenya.

Committee's Observation/ Recommendation

The Committee agreed with the proposal to isolate all articles dealing with Public Participation.

Lack of Definition of Meaningful Participation

73. International Budget Partnership Kenya further submitted that the Bill does not provide guidance on what constitutes a meaningful public participation opportunity and therefore suggested some considerations for meaningful participation—
- a) **Access to information:** The availability and comprehensiveness of timely information relevant to the decision at hand. This should include a minimum threshold of what constitutes timely access to information.

- b) **Decision at hand:** Clear communication of the agenda of public participation with details of who is affected by the decision, what information the public should refer to in their preparation.
- c) **Inclusivity:** The need for inclusive and effective representation members of the public are likely to be affected by the decision.
- d) **Facilitation of public participation:** Government officials who facilitate public deliberation should be well versed with the subject matter to support an informed dialogue between citizens and their government.
- e) **Feedback:** Feedback refers to what happens after public deliberations. The mechanisms through which the public will be informed of their inputs on the decision, how their inputs informed the decision-making process and the decision itself.

On their end they submitted that since the onset of devolution different public bodies have overtime, developed their own legislations and policy on public participation. The current bill does not seem to provide an idea of what will happen with these existing pieces of legislation.

Strengthening of requirement on reporting of Public Participation (Provision 12, 6 of Guidelines)

74. They further submitted that the public should also have access to these reports. As such, there should be an explicit requirement to publish and publicise the reports. The information to be included in these reports should include all input received during public participation engagements, how these responses were analyzed, who attended the engagement, the final outcome, and the reason for the outcome.

Committee's Observation/ Recommendation

The Committee was of the opinion that what was being sought by the stakeholder is already being done as most reports of public participation forums were public documents that could be assessed by any interested person.

Creation of mechanisms to enable timely access to information

75. The partnership submitted that Paragraphs 2, 4, 5 and 6 of the general guidelines are key to ensuring fair and timely access to information before and after public participation engagements. They further recommended that the regulations include the provision on the appointment of an access to information officer in all state bodies as a port of call for information request provided for in section 7 (2) of the Access Information Act.

Committee Observations/ Recommendations

The Committee was of the view that the Access to information Act has set out mechanisms for access to information and the same should not find its way in this law (duplicity of laws).

4.7 CAUCUS ON DISABILITY RIGHTS ADVOCACY (CDRA) AND THE UNITED DISABLED PERSONS OF KENYA(UDPK)

Clause 4 Object of the Act

76. The CDRA and UDPK submitted that a new sub-clause be included in Clause 4 on the objects of the Act as follows

“(b) Promote inclusiveness in public participation for all persons and in particular persons with disabilities.” That participation by persons with disabilities has been a big issue in terms of meaningful and effective participation.

Committee observations and Recommendation

The proposal was agreed to for inclusivity of persons with disabilities

Clause 6. Conduct of public participation.

77. CDRA and UDPK further submitted that the Bill be amended by inserting the words “procedural accommodation’ in clause 6 (1) to read as follows — *A state organ or public office shall provide reasonable **procedural accommodation** and meaningful opportunities for public participation.* That procedural accommodation refers to accessibility of venue and ensuring that the process provides for the needs of those who use different means of communication, e.g., sign language to facilitate participation by persons with disability. In particular, procedural accommodation refers to accessibility of venue and ensuring that the process provides for the needs of those who use different means of communication, e.g., sign language to facilitate participation by persons with disability. This is necessary to ensure participation by all including persons with disabilities.

Committee’s Observation/ Recommendation

The proposal was agreed to by the Committee to make room for the inclusivity of persons with disability.

Clause 6 (2) (d)

78. They submitted that section 6(2)(d) read as (d) need for inclusive and effective representation **including the recognition of the need for reasonable accommodation.** In their justification, reasonable accommodation refers to specific needs of individuals to enable them to participate, for instance, the Deaf require sign language interpretation, the Blind may require information in Braille, and persons with intellectual disabilities and autism may require information in Easy Read.

Committee’s Observation/ Recommendation

The proposal was agreed to by the Committee to make room for the inclusivity of persons with disabilities.

Clause 7 (2)

79. CDRA and UDPK submitted that Clause 7(2)(b) of the Bill be amended as follows; “(b) attend a public participation forum and make presentation either orally, by way of written submission, **by Kenyan Sign Language or any other augmentative and alternative forms of communication** to a state organ or public office on the subject matter as may be determined. In their justification, they stated that Kenyan Sign Language is recognized in the Constitution in Article 7(3) (b) where the state is obligated to promote its usage and development. There is a need to explicitly state that persons can make contributions through Sign Language to promote participation.

Committee observations and recommendation

The proposal was agreed to by the Committee to make room for the inclusion of persons with disabilities.

Clause 9(2) Development of specific public participation guidelines

80. They submitted that a new sub-clause 2(c) be inserted in the Bill as follows “*(2(c) Provide specific guidelines on the participation of persons with disabilities in accessible means of communication including Braille, Sign Language or other appropriate means of communication.*” As such facilitates public participation by persons with disabilities.

Committee’s observation/ recommendation

The proposal was agreed to by the Committee to make room for the inclusivity of persons with disabilities

Clause 11 Financial provisions

81. CDRA and UDPK further submitted that section 11 of the Bill be amended to read as “*A state organ or public office shall provide the necessary resources under this Act and shall include in its annual estimates provisions for expenses for purposes of undertaking public participation and for purposes of ensuring full participation of persons with disabilities.*” Specifically, it should ring-fence resources allocated for public participation to cater for the participation of persons with disabilities.

Committee’s Observation/Recommendation

The proposal was disagreed to by the Committee as the notice may vary from one entity to another therefore a blanket amendment on it may not be practical.

Clause 12 Reports.

82. It was submitted by the stakeholders that a new sub-clause 12(4)(b) be inserted to read as follows — “*12 (b) disaggregated data of the number of special interest groups, in particular persons with disabilities, who participated in the public participation forums.*”

Committee observations and recommendation

The proposal was agreed to by the Committee to make room for the inclusion of persons with disabilities.

Clause 13 Penalty

83. They further submitted that the Bill be amended in clause 13 to delete the words “no fine” appearing immediately after the word “fine”.

Committee’s Observations and Recommendation

The proposal was adopted as its sole purpose was to correct an existing typographical error in the Bill.

Schedule—General public participation guidelines.

Factors to be considered

84. They further submitted that clause 1(i) be amended to read as follows; “(i) the ability of the targeted participants to access the necessary information, including **in accessible formats, and the venue**”. Especially, in recognition of the fact that there are people who access information in alternative methods as opposed to the common methods of information dissemination.

Committee’s Observation/Recommendation

The proposal was agreed to by the Committee to make room for the inclusion of persons with disabilities.

Paragraph 2 Notice.

85. The stakeholder further submitted to delete “adequate” and replace it with “14 days” in the paragraph to read as follows; “*A state organ or public office shall give the public 14 days’ notice to make input on the issue.*” As such specifies the time makes the process predictable and timelines certain.

Committee’s Observations and Recommendation

The proposal was not adopted as specifying the number of days would be restrictive.

SCHEDULE

Notice.

86. That section 2 (2) (c) of the bill be amended — by inserting the words “that are adherent to KS 2952 – Accessibility - ICT Products and Services by the Kenya Bureau of Standards” immediately after the word “website”. As such ensure that websites used for the publication of public participation notices are accessible to persons with disabilities in their diversities.

Committee’s observations and recommendation

The proposal was agreed to by the Committee to make room for the inclusion of persons with disabilities.

Access to public participation processes.

87. They submitted that the words “meaningful and effective” be added to section 3(2) to read as: *“A state organ or public office shall take all necessary measures to ensure the meaningful and effective participation of persons with disabilities in the public participation processes.”*

As such it emphasizes the participation of persons with disabilities to be meaningful and effective in line with Article 4 (3).

Committee’s Observation/Recommendation

The proposal was disagreed to as it is difficult to measure meaningfulness in a public participation process.

Adequate time.

88. That a state organ or public office shall give the public **14 days’ notice** to make input on the issue. As such specifies the time makes the process predictable and timelines certain. Repetition in Notice.

Committee observation/ recommendation

The proposal was disagreed upon as the notice may vary from one entity to another therefore a blanket amendment on it may not be practical.

Access to information for public participation

89. They further suggested that section 5(1)(b) be read as:” *to ensure that the documents are published and distributed in a language and form that can be used by the public as well as Kenyan Sign Language, Braille, electronic and other alternative and augmentative communication methods.*” They indicated that there are other forms of communication, particularly for persons with various disabilities that are necessary to consider in all aspects of public participation

Committee Observation/ Recommendation

The proposal was adopted to allow for accommodation and inclusion of persons with disabilities.

Access to information for public participation.

90. They submitted that clause 5 (3) (b) of the Bill be deleted. They stated that this provision as drafted contradicted the provision of Article 35 (1) of the Constitution which provides that every citizen has the right of access to information held by the State and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.

Committee’s Observation/ Recommendation

The proposal was adopted to allow for inclusion of persons with disabilities

Processing of responses.

91. They submitted that paragraph (b) of the Bill be amended as follows; “(b) the final decision is made available to the public **in accessible formats, including the reasons for the decisions taken**”. As that indicates that there are other forms of communication, particularly for persons with various disabilities that are necessary to consider in all aspects of public participation.
92. Further, that section (c) be amended as follows; “*the disclosure of all relevant information including all the proposals submitted and or considered.*” In their justification, they submitted that there is need to know if all submitted proposals were considered and included in the final decision made.

Committee’s Observation/ Recommendation

93. The Committee opined that the process of providing feedback for every decision made would not be tenable.

4.8 URAI TRUST

Section 14

94. Urai Trust submitted that Clause 14(1) be amended by inserting a clause to define the scope and limitations of the Cabinet Secretary’s authority to make regulations under the Bill. They noted that while it is important to grant the Cabinet Secretary the authority to make regulations for the better implementation of the Bill, it is crucial to specify the scope and the limits of such delegated powers. As that would help in avoiding potential misuse of authority and ensuring accountability.

Committee’s Observation/ Recommendation

The Committee was of the view that the clause on delegated legislations as drafted was in order. Gagging the regulation making body in an area like public participation was seen to be retrogressive.

95. The Trust further submitted that Clause 14(2) (a) providing for the Cabinet Secretary’s authority to specify additional institutions should include a requirement for public consultation before making such decisions to ensure a more inclusive and informed process. It further submitted that Clause 14(2)(b) should specify the criteria for the process by which the Cabinet Secretary determines the matters that need to be described, and require the Cabinet secretary to publish the reasons for prescribing certain matters for transparency and accountability.

Committee’s Observation/ Recommendation

The Committee was of the view that there was no need of providing an administrative procedure in the law, the Cabinet Secretary was bound to be well guided by clause 14(2)(b)

and over legislating on the same was bound hamper decision making on the part of the Cabinet Secretary.

96. Additionally, the Trust averred that Clause 14(3)(c) be amended to elaborate the application of the principles and standards of Statutory Instruments Act and the Interpretation and General Provisions Act to the delegated powers in the Clause. In justification, the Trust asserted that it is important to specify the principles and standards applicable to the delegated powers.

97. Committee's Observation/ Recommendation

The Committee opined that provision as drafted was clear and did not require any further amendment.

SCHEDULE

98. The Trust proposed for codification of the principles of public participation as enunciated by the courts in the Schedule on General Public Participation Guidelines. Specifically, the Trust proposed the inclusion of the need to adhere to the principle that public participation must be real and not illusory, and that it should not appear to be too cosmetic or a public relations act, so as to ensure that public participation is not turned into a mere formality undertaken as a matter of course just to fulfil a constitutional requirement.

Committee's Observations/Recommendation

The Committee was of the view that these principles enunciated by the Court had already found their way in the Public Participation Policy and should therefore not be included in this law.

4.9 COAST CIVIL SOCIETY NETWORK FOR HUMAN RIGHTS (CCSNHR)

Clause 2

99. The coast Civil Society Network for Human Rights submitted that the Bill be amended by providing for a new definition of the term “public” as follows — “**public**” includes individuals, community groups, civil society organizations, and businesses. As such ensure that all interested parties and stakeholders have the opportunity to participate in decision-making processes.

Committee Observation/ Recommendation

The Committee was of the opinion that the new proposed definition was not necessary.

General recommendations

100. Further, they provided the general recommendations—

- a) **Enhance Access to Information:** While the Bill recognizes the right to request information, it should establish strict timelines for responding to requests and should minimise the discretion of state organs to withhold information. Additionally, it should ensure that the information is provided in a format accessible to all, including those with disabilities or who may not be proficient in the national language.

- b) **Diversity and Inclusion:** They indicated that there should be explicit requirements in the Bill to ensure that public participation processes are accessible and inclusive. This includes providing interpreters for participants who are not proficient in the national language and sign interpreters for people with disabilities to accommodate all the groups in the community. Guidelines should also be developed to ensure representation from marginalized groups.
- c) **Feedback Mechanism:** They pointed out that it would be beneficial for the Bill to include a phrase that allows the public entity to provide feedback on the public participation process on what has been adopted and what has not yet. This feedback is valuable, for making the government accountable to its citizens and encouraging the people to participate in public participation

Committee Observation/ Recommendation

The general spirit for inclusion of the needs and requirements for persons with disabilities was a good addition to the Bill.

4.10 WECARE ORGANIZATION

Clause 2

- 101. WECARE Organization submitted that there was a need to amend the definition of “public participation” and proceeded to provide an alternative definition as follows “public participation means the process through which the public is fully engaged and involved in formulating, understanding, and contributing to the decision-making process and their views considered by state organs and public offices at the policy-making, law-making, implementation, and evaluation levels.” As such it makes it more effective, and inclusive and gives effect to article 1(all sovereign power belongs to the people) of the Constitution.

Committee Observation/ Recommendation

The Committee in its observation was of the view that the definition of the term “public participation” in the Bill was sufficient

Clause 4

- 102. It further submitted that clause 4 of the Bill be amended to read as follows; “*The object of this Act is to safeguard the sovereign power of the people of Kenya as enshrined in Article 1 of the Constitution.*” The organization further submitted that the primary objective of this Act should be to recognize, safeguard and promote Article 1 of the Constitution.

Committee Observation/ Recommendation

The proposal was not agreed upon by the Committee as the objects of the Act were more than what the stakeholder had proposed.

Clause 7 (2)

103. It further submitted that the Bill be amended by inserting a new Clause 7(2)(d) as follows; *“a member of the public taking part in the decision-making process should be given feedback on the extent to which their submissions or views have been considered or reasons for not being considered in giving effect to Article 35(1)(a) of the Constitution.”* The organization noted that this gives effect to Article 35(1) of the Constitution which provides that members of the public have the right to access the information held by the State and the State shall publish and publicize any important information affecting the nation.

Committee’s Observation/ Recommendation

The Committee noted that implementation of established feedback mechanism on every decision made by an entity was not practical and the same was bound to attract huge financial cost. Publication of reports on websites and making them available to citizens was sufficient.

Clause 11 Financial provisions

104. They further submitted that the financing of public participation processes should be ring-fenced and, if possible capped at a given percentage of the annual budgets of state organs or public offices. As that avoids cases of corruption or wastage.

Committee’s observation/Recommendation

The committee observed that the law was clear each state organ is required to provide the necessary financial resources as per their needs/ requirements, that will ensure that the cardinal principle of public participation is catered for in decision making.

Clause 12 Reports.

105. Further, they submitted that the Bill should be amended to make provision to insert a new paragraph after paragraph (b) to read as follows— section “12(4)(b) *details of the level of inclusivity in the public participation process giving priority to people with disabilities, the marginalised, vulnerable and minority groups*; and section 12(4)(c) *the views considered from members of the public and the feedback given to the citizens to guide implementation and evaluation of the public participation processes.*”

Committee’s observation/Recommendation

The aspect of inclusivity was important and may be added to some of the contents of the annual reports to be tabled in the National Assembly.

Clause 13 Penalty

106. They further submitted that clause 13 be amended to read as follows— *“Any person who contravenes any provision of this Act if convicted be liable to a fine not exceeding five million shillings or imprisonment for a term not exceeding two years or both.”* “As such enhance penalty and clarity purposes.

Committee's Observation/Recommendation

The proposal was not carried by the Committee as the penalties proposed were severe and very punitive.

SCHEDULE—General public participation guidelines.

Notice.

107. WeCare submitted that “A state organ or public office shall give the public 21 days' notice to make input on the issue.” As such enhance participation, fairness, equity and inclusivity so that people from different regions who might be having difficulties with communication (medium or network availability and strength), interpretation, or accessibility can have enough time to discuss, understand and share inputs with relevant authority.

Committee's observation/ Recommendation

The Committee opined that the aspect of notice may vary from one entity to another therefore a blanket amendment on it may not be practical.

Access to information

108. WeCare further suggested that the documents and websites/ digital platforms should be disability friendly, i.e., have braille features, and availability of sign language interpreters among other means that will be deemed necessary. As this enhances accessibility to all members of the public.

Committee's Observation/ Recommendation

The proposal was adopted for inclusion of persons with disabilities.

Access to information for public participation

109. It further submitted that the Clause 5(1)(d) be amended to make provision for **conducting of civic education, awareness, and public sensitization on the** issues to be discussed before members of the public give their views. As this enhances public awareness and sensitization.

Committee's Observation/ Recommendation

The proposal was disagreed upon given the wide nature of civic education it may be impossible for any entity to deliver on its mandate.

4.11 KENYA CLIMATE CHANGE WORKING GROUP

Clause 2 Interpretation

110. The Group suggested insertion and definition of the term “public” with the aim of providing clarity.

Committee's Observation/ Recommendation

The new definition was not necessary

Clause 12 Reports.

111. The Kenya Climate Change Working Group submitted that section 12(4a &b) should give the report that indicates how public participation was conducted and how it was inclusive and effective.

Committee's Observation/ Recommendation

The proposal though progressive was already provided for in the Bill.

Clause 14(2)(a) Regulations

112. The group further submitted that this provision be deleted on grounds that this may bring about conflict of interest as that avoids conflict of interest.

Committee's Observation/ Recommendation

The proposal was not agreed to as clause 14(2) (b) seeks to give the regulating authority wiggle room to prescribe any other matter that may be important in enhancing Public Participation.

SCHEDULE

Access to information for public participation

113. The Group further submitted that the costs should be incurred by the authority and not the public.

Committee's Observation/ Recommendation

The Access to information Act provides for the procedure of obtaining any information and the public is required to pay a small fee of facilitation of that information, otherwise it may be very costly for government to run if the cost borne by it.

4.12 CIVIL SOCIETY PARLIAMENTARY ENGAGEMENT NETWORK(CSPEN)

Clause 2 Interpretation

114. The Network submitted that the definition of the term Cabinet Secretary be amended to be restricted to the Attorney General. The justification was that the definition will decrease ambiguity as there is no minister for justice as well as mitigate potential conflicts of interest.

Committee's Observation/Recommendation

The proposal was agreed to as it provides clarity on who the responsible office/ authority is.

115. The stakeholder proposed that the Bill be amended by providing for the definition of the term “**Civic Education**” as follows : *“the process of effectively imparting information and creating awareness of decision-making processes, legislations, public policy, rights of the public and responsibilities of state organs and public offices including how these rights and responsibilities are exercised and accessed by the public and includes classroom-based learning, informal training, experiential learning, and mass media campaigns.”* The Network noted that effective public participation in decision making within democratic society, aligning with Article 35 of the Constitution which supports access to information. As such involves integrating civic education in the national budget, ensuring allocated funds are properly utilised with specific measures in place.

Committee’s Observation/Recommendation

The proposal was not agreed to as the introduction of the civic education aspect in public participation would broaden the scope of the public participation process.

116. The stakeholder also suggested that that the definition of public participation as provided in the Bill was not sufficient and that the same ought to be amended as follows “**Public participation**’ means *the process where individuals and governmental and non-governmental groups are engaged and influence decision-making in policy, legislation, service delivery, oversight, audit, and development matters.* They noted that the definitions borrow heavily from the definition adopted in the County Public Participation Guidelines by the ministry of Devolution and Arid and Semi- Arid Lands which broaden the actors and scope of public participation. Alternatively, this definition introduces the public participation in the audit process aligning it to ongoing practices at the OAG and its specific department on social audits/social accountability.

Committee’s observation/Recommendation

The Committee was of the view that the definition of the term “public participation” as provided in the Bill was sufficient.

Clause 4 Object of the Act

117. Additionally, the CSPEN submitted that Article 174 (c) and Article 184 (1)(c) of the Constitution be amended to include among the Articles that the Act intends to give effect to under sub-clause 4(a). They noted that these Articles highlight public participation as an object of devolution and as a key principle in the governance of urban areas and cities.

Committee’s observation/Recommendation

The proposal was agreed to, to add all constitutional provisions that speak on the subject of public participation should be included in the long title of the Bill.

Clause 5—Scope of public participation

118. CSPEN further suggested insertion of a new scope of participation—Vetting of select State officers. In justification, they noted that while these processes are guided by both the Public Appointments (Parliamentary Approval) Act and the Public Appointments (County Assemblies Approval) Acts, it is crucial to emphasize that they still fall within the ambit of public participation processes.

Committee's Observation/Recommendation

The Committee observed that the proposed proposal was an overkill owing to the fact that the cited process is carried out in open and the public is allowed to attend. That it is not possible to legislate on everything in a statute hence the need for subsidiary legislation.

Clause 6— conduct of public participation

119. CSPEN Proposed that the Bill be amended by inserting a new sub-clause (3) to provide for components of meaningful public participation to include—

- i) clarity of the subject matter for the public to understand;
- ii) structures and processes (medium of engagement) of participation that are clear and simple;
- iii) opportunity for balanced influence from the public in general;
- iv) commitment to the process;
- v) capacity to engage on the part of the public,
 - a. including that the public must first be sensitized on the subject matter.
- vi) Feedback on the input given, eventual outcome and how input influenced the outcome of public participation

Committee Observation/ Recommendation

The proposal was not adopted by the Committee as it would be difficult to implement the issues proposed since follow up cannot be achieved.

Clause 7 (2)

Rights of a Member of the public in public participation

120. The CSPEN further suggested that the Bill be amended by inserting the following new additional rights under sub-clause (2) of the Bill:

- a) Making presentations without influence or interruptions by a State or public officer.
- b) Members of the public should also not face any sanctions for attending and making submissions during public participation forums.
- c) The public should also be accorded adequate and reasonable time to make presentations.

They justified their view by stating that they noted that this seeks to reduce cases where citizens feel that they are intimidated within public participation proceedings.

121. Additionally, the CSPEN further noted that the insertion of the obligations of state organs and/or public officers in conducting public participation such as establishment of proper structures for meaningful public participation and the establishment of a monitoring and evaluation framework. It further submitted that parallel to the existence of rights, there should be corresponding obligations that necessitate codification. They noted that the input by public or state officers should be limited to giving instructions and/or making clarifications on issues raised on the matter under consideration. This is to avoid intimidation of members of the public on the submissions made.

Committee observation/ Recommendation

The Bill had adequately taken care of this provision.

122. Further, there was a proposal to effect an amendment to sub-clause 2 (b) of the Bill to make provision for members of the public to make submissions through Kenyan Sign Language administered by qualified sign language professionals. As that ensures inclusion of all members of the public.

Committee observation/ Recommendation

The proposal was adopted for inclusion of persons with disabilities

Clause 8 Determination of responsible authority.

123. They further suggested that Clause (8) of the Bill be amended to highlight that the stated responsible authorities hold the power to delegate the performance of the duties within the Act to an officer with that specific scope. That ensures that citizens have a point of contact within the state organ or public office that they can follow up with and hold to account on matters concerning public participation.

Committee observation/ Recommendation

The proposal was disagreed to since the Attorney General is the responsible authority.

Clause 12-Reports

124. CSPEN made a proposal to the effect that sub-clause (4) should be amended to include:

- i) a summary of the number and nature of public participation sessions held,
- ii) the immediate output and outcomes from public involvement, and
- iii) an update on the future steps or progress of the matters under consideration.

They noted that the annual report should outline all the information collected during all public participation sessions.

125. Further, CSPEN noted that a sub-clause should be introduced to note that the annual reports should be made public for access to the public through the official websites of the Parliament, relevant institutions, and any other relevant channel of communication. They

justified that the annual reports on public participation should be made public for access to the public at the end of each fiscal year in line with Article 35 of the Constitution.

Committee Observation/Recommendation

The proposal was agreed to but to the extent that it provided that the report to include the summary on the number of sessions held, output and outcome of the process for all matters under consideration.

Clause 13 Penalty

126. CSPEN further suggested that the provision to provide for specific offences and penalties be amended. They noted that the Bill should clearly define punishable conduct which will then be followed by the penalty. In this way, both citizens and public/state officers can foresee when a specific Act would be a violation and adjust their conduct accordingly.

Committee's Observation/ Recommendation

The suggested fines by the stakeholder were deemed to be very punitive.

Schedule—General public participation guidelines.

Factors to be considered.

127. CESPEN suggested that the Bill be amended by providing for a new clause on guiding principles to be inserted—

“Reasonable accommodations that persons with disabilities may require to participate meaningfully, including qualified sign language interpreters, physically accessible infrastructures and documents provided in braille/large print.” As that ensures persons with disabilities enjoy or exercise on an equal basis with others all human rights and fundamental freedoms in line with the Convention on the Rights of Persons with Disabilities.

Committee's Observation/Recommendation

The proposal was adopted for purposes of promoting and enhancing inclusivity of persons with disabilities.

Paragraph 2 Notice Section 2 (1).

128. Additionally, CSPEN submitted that the Bill be amended as follows;

“A state organ or public office shall give the public 21 days’ notice to make input on the issue”. They noted that 21 days will provide interested parties sufficient time to analyse and prepare submissions for hearing

Committee Observation/Recommendation

The proposal was disagreed with as specifying the time frame would be restrictive

129. Additionally, they submitted that insertion of social media platforms under (2) (a) as a place for publication and distribution of notices. On their end, they noted that as of January 2022, there were 11.75 million social media users in Kenya. Many Kenyans use these platforms avidly and receive information from the same. There has been a growing trend of government agencies leveraging these platforms to share vital information to citizens.

Committee observation/Recommendation

The proposal was agreed to provide in order to provide for wide coverage and reach to the citizens and in a medium that would be well received and understood.

Adequate time.

130. CSPEN in their submission to the Committee sought to effect an amendment on guideline 4 of the Bill by specifying a timeline of **21 days**. They noted that twenty-one days was aimed at providing interested parties with sufficient time to analyse and prepare submissions for hearing.

Committee observation/Recommendation

The proposal was seen to be untenable by the Committee.

Access to information for public participation

131. They averred that guideline 5 (1) (a) be amended to read as;
Publish and distribute the documents for consideration as widely as possible using the available means, including providing hard copies, radio and television advertisements, websites, or community radio announcements *at least 14 days (about 2 weeks) before the deadline for submission of feedback*. This is on the basis of specifying the time makes the process predictable and timelines certain.

Committee's observation/Recommendation

The aspect of providing a timeline in the law was deemed to be impractical.

Clause 5

132. Further, CSPEN submitted that clause 5(3)(c) of the Bill be amended as follows: "This may be subject to *information disclosure limitations under the access to Information Act*. As such ensure that many limitations imposed by a state organ or public office subject to the access of Information Act."
133. Additionally, they submitted that guideline 5 of 4(b) be amended to read; The applicant fails to satisfy any *access to information requirements* as that ensures a failure by a state organ or public office to give information pursuant to Article 35 of the Constitution as well as the Access to Information Act. Imposing a confidentiality requirement is subjective and may be in contravention of the access to Information Act.

Processing of responses.

134. The CSPEN suggested that the insertion of the following clause— (d) transfer of applications to another public entity, if the information requested is held by that other public entity. They noted that this is in line with the provisions of section 10 of the Access to Information Act and enables ease of access to information by applicants.

Committee observation/Recommendation

The proposal was disagreed to as matters concerning access to information were well provided for in the access to information Act.

General recommendations

135. In conclusion CSPEN in their proposals suggested the alignment of existing public participation legislation. They submitted that the regulations should provide adequate mechanisms to align the existing laws and policies to the overarching framework provided by the bill. They noted that a number of public bodies have developed their own legislations and policies on public participation including several counties.

4.13 CENTRE FOR INTELLECTUAL PROPERTY AND INFORMATION TECHNOLOGY LAW

Clause 2 Interpretation

136. The Center for Intellectual Property and Information Technology Law made its submissions to the committee on the Bill. The Centre averred that the Bill should be amended to insert a new term in the interpretation part of the Bill as follows— “**public awareness**”. As such, enhance meaningful and inclusive public participation processes.

Committee’s Observations/Recommendations

The new definition was not necessary and therefore the proposal was not adopted.

Clause 5

137. The CIPIT further proposed that the Bill be amended by inserting a new paragraph to clause 5 on the scope of public participation as follows- e “*the implementation of functions that are far reaching on the public communities and organisations.*” They noted that public participation should be made a prerequisite in the introduction and enforcement of government functions that have far-reaching consequences on the public, communities and organisations.

Committee’s Observations/Recommendations

The scope as provided for in the Bill had already taken care of the concerns raised by this stakeholder.

Clause 6

138. The CIPIT also in their submissions averred that the section of the Bill that provides for factors to consider in determining “meaningful opportunities for public participation”. should be regulated with precision what constitutes meaningful public participation.

Committee’s Observations/Recommendations

There was indeed a need to define or unpack the term meaningful public participation so that nothing is left to chance.

Schedule—General public participation guidelines.

Paragraph 2 Notice.

139. The stakeholders were of the opinion that the provision of a definite time for the notice to be given: *and they suggested that the definite period should be 14 days’ notice.* As that specifies the time makes the process predictable and timelines certain.

Committee’s Observations/Recommendations

The committee observed that the nature of public participation may vary from one subject to another which would then make it difficult to come up with one definite period, entities should be left to regulate their timeframes in a reasonable manner.

Schedule

General public participation guidelines—Adequate time.

140. The CIPIT further submitted that:” A state organ or public office shall give the public **14 days’ notice** to make input on the issue.”

Committee’s Observations/Recommendations

The Committee observed that the nature of public participation may vary from one subject to another which would then make it difficult to come up with one definite period, entities should be left to regulate their timeframes in a reasonable manner.

4.14 KENYA DEVOLUTION CIVIL SOCIETY ORGANIZATION WORKING GROUP (KDCSWG)

Title

141. The Devolution Civil Society Organization Working in their submissions on the Bill to the Committee proposed that the short title of the Bill should be amended to read as; “*The Civic Education and Public Participation Bill 2023*”.

In their justification, the KDCSWG noted that civic education and public participation are closely linked and intertwined, hence, it is not possible to have meaningful public participation without civic education. Alternatively, the Group suggested for inclusion of specific clauses on civic education in the Bill in the event that it is not possible to change the short title of the Bill in its current form to consider and cover civic education.

Committee's Observations/Recommendations

The Committee did not adopt the proposal because introduction of civic education was bound to broaden the scope and shift the intention of public participation. Since it is not provided for in the constitution, members observed that there was therefore no need to include it in the title.

Clause 1- Long title

142. The KDCSWG noted that the long title of the Bill ought to be amended to include Article 174(c) and (d) of the Constitution of Kenya, noting that the Bill is meant to regulate public participation at both levels of government.

Committee's Observations/Recommendations

The Members agreed to the proposal as it is seeking to provide for all constitutional provisions that deal with public participation.

Clause 2 Interpretation

143. Additionally, the KDCSWG submitted that the bill be amended in the interpretation section by amending the term phrase "Cabinet Secretary" as follows: "***Cabinet Secretary***" *means the Cabinet Secretary responsible for Public Service*. According to them, public participation is one of the national values of governance, and the Public Service Commission is responsible for implementation of these values.

Committee's Observations/Recommendations

The Committee was of the view that the AG had been designated in the Public Participation Policy as the in charge and lead agency in the implementation of the process.

144. They further averred that the definition of public participation should be amended to include "**planning, budgeting, monitoring, evaluation and auditing**" as part of the decision-making processes for citizen engagement. Accordingly, they submitted that the law should explicitly state that all citizens will be included in all levels of governance for full realization of the provisions of Article 1 and Article 10 of the constitution.

Committee's Observations/Recommendations

Members rejected the proposal owing to the fact that involvement of the public in all those processes was going to attract huge budget constraints with the resultant effect of affecting the implementation of public participation.

Clause 4 Object of the Act

145. The KDCSWG in their submission proposed that **civic education** should be included as an objective for enabling or promotion of public participation. They noted that Civic education is an important ingredient for public participation.
146. Further the Group suggested the insertion of a new provision on guiding principles—
- a) That public participation shall be two- way process- with feedbacks to citizen given on decisions made actions taken and results achieved by the county government;
 - b) That public participation shall be a continuous process and not a one time event;
 - c) That the public, communities and organizations that shall be affected by a decision shall have a right to be consulted and involved in the decision-making process;
 - d) Provisions of timely and relevant information, accessible to all members of the public so that they are aware and can engage in decisions that affect them;
 - e) Adherence to the principles under Article 10 and Chapter Six of the Constitution;
 - f) Adherence to the principles of public participation prescribed by Section 87 of the County Government Act and any written law; and
 - g) Promotion of sustainable decisions recognizing needs and interest of all participants including decision makers.

Committee's Observations/Recommendations

Members disagreed that civic education is not provided as part of public participation in the Constitution of Kenya 2010 and that was widening the scope of Public Participation.

Clause 5—Scope of the public participation

147. The KDCSWG further averred that the Bill should be amended further in clause five at paragraph (a), (b) and (c) as follows—
- a) Formulation and implementation of policies;
 - b) Planning budgeting and financial management
 - c) Making and implementation of laws.

148. The KDCSWG further proposed that clause 5(d) be renamed to 5(e) in the Bill, noting that the changes in this scope of public participation is to integrate the citizen participation in all the processes of public governance in line with Article 1 of the Kenyan Constitution.

Committee's Observations/Recommendations

Members disagreed that involvement of the public in budgeting is not cost effective and it is a tedious process.

Clause 6(2)(e) conduct of public participation

149. The KDCSWG further suggested to include a section on — (f) interest and relevance of stakeholders. They noted that having two tiers of consultations enables initial consultation with stakeholders before the general public.

Committee's Observations/Recommendations

Members disagreed with the proposal because the sub-clause 6 (2) (d) has covered all the key stakeholders.

Clause 7 (2)

Rights of a Member of the public in public participation

150. The KDCSWG proposed that the Bill be amended by providing for an insertion of a new clause in 7(2) as follows—

“A member of the public to be affected by the decision can be consulted/appear virtually

Provision of adequate time to make submissions and presentations

The public or entities should make presentations without state or public office interference and without any sanctions from the state or public office or political interference. “They noted that this ensures the right to freedom of expression as enshrined in the bill of rights stipulated in the Constitution as well as to include Kenyans living abroad in public participation.

Committee's Observations/Recommendations

Members agreed that virtual means of communication are necessary.

Clause 8

Determination of responsible authority.

151. The KDCSWG further suggested the authority of County Assemblies in clause 8(2) should be added. This is because County Assemblies are also responsible authorities to the devolved governments
152. They further sought an amendment to substitute Cabinet Secretaries with Permanent Secretaries in clause 8(5). This is because the accounting officers are Permanent Secretaries, not Cabinet Secretaries.
153. On their end they submitted that the government department responsible for implementing the law should be the Public Service Commission instead of the Ministry of Justice. They asserted that the Attorney General is the custodian of the law, noting that the implementation of the Bill should be charged to an independent body to coordinate public participation and Civic Education and ensure compliance.

Committee's Observations/Recommendations

The function of implementation of the Policy had been given to the Attorney General.

154. The KDCSWG suggested that the section (2) sub-section (3) (d) of the Bill be amended to provide that a virtual option be included. As that caters for those not present and those in the diaspora.

Committee's Observations/Recommendations

The proposal is sensible in the present day and age, the challenge lies in the implementation process due to insufficient resources however, the same could be done progressively.

Schedule

General public participation guidelines.

Access to information for public participation

155. The KDCSWG Group suggested that there should be no charge for public information. They noted that if a charge is included it will limit the right to access to information.

Committee's Observations/Recommendations

The Committee noted that the Access to Information Act provides for the procedure of obtaining any information and the public is required to pay a small fee of facilitation of the information, otherwise it may be very costly for government to run.

Schedule

General public participation guidelines.

Access to information for public participation

156. The KDCSWG suggested that there should be no confidentiality for public information unless it's security information which is protected by law. As that clause may be used by state organs and public offices to deny information hence violation of the right to public information.

Committee's Observations/Recommendations

There are instances when the issue of confidentiality may arise, therefore a blanket refusal of the same should not be entertained, but the case should remain as it is and be implemented on a case-by-case basis

157. The KDCSWG further proposed that paragraph 5(4) (a) of the Bill be deleted. They observed that unreasonable circumstances are not defined by any law and are subject to wrong interpretation and hence might be used to violate the right to information.

Committee's Observations/Recommendations

The committee agreed with the proposal as the unreasonable circumstances had not been defined.

158. The KDCSWG asserted that Confidentiality requirements in paragraph 5(4)(b) be removed. They noted that confidentiality requirements will limit the right to information and hence they should be done away with.

Committee's Observations/Recommendations

There are instances when the issue of confidentiality may arise, therefore a blanket refusal of the same should not be entertained, but the case should remain as it is and be implemented on a case-by-case basis

159. The KDCSWG proposed that Clause (5) sub-clause (5) of the Bill to be amended to delete the words “nature and extent”. They noted that this is ambiguous and not specified in any law or regulations and might be used to deny public information.

Conduct in public participation processes.

160. The KDCSWG suggested that in paragraph 8(3) the terms “nature and extent” be deleted. They noted that the nature and extent is not defined anywhere hence it is ambiguous and a hindrance to the right to freedom of expression.

NEW CLAUSE ON DISPUTE RESOLUTION

161. The KDCSWG asserted that the Bill does not have a redress mechanism and recommended a whole section to be included. They noted that this will reduce petitions or litigation which occurs after the public participation process is undertaken.

Committee's Observations/Recommendations

This proposal was agreed to as there was a need to come up with a dispute resolution mechanism in the law.

General recommendations

162. The KDCSWG suggested that—the Bill is very weak on feedback and recommended a whole section to be included. They noted that this will ensure validation, review, monitoring and evaluation of the process of public participation. They further noted that a whole part of the Bill includes civic education and budget allocation. They suggested that this will make the people participate meaningfully in the public participation process.
163. They suggested the Bill still lacks the following key issues:
- a) lack of minimum standards as to what comprises adequate, effective and meaningful participation especially at the community level;
 - b) Inadequate framework for ensuring the effective participation and involvement of the marginalized, vulnerable and minority groups in county governance and development;
 - c) Inadequate safeguards of public interest in public participation processes; and
 - d) Inadequate complaint handling, reporting & feedback mechanisms.

Committee's Observations/Recommendations

The Bill had provided for feedback mechanisms and the Access to Information Act, does not preclude anyone from seeking for information from any public entity on a respective matter.

4.15 KENYA LAW REFORM COMMISSION

Clause 2 Interpretation

164. The KLRC suggested that the definition of Cabinet Secretary be amended to “Cabinet Secretary”. The definition stated that it “includes” the Attorney General. They noted that this may pose a challenge in identifying the particular state officer to be designated as the Cabinet Secretary. As such, challenges may affect accountability on any responsibility vested in the Cabinet Secretary.

Committee's Observations/Recommendations

The Committee was of the view that the definition of the term Cabinet Secretary should be re- defined to avoid any ambiguity and misinterpretation.

Clause 5

165. KLRC submitted that clause 5 of the Bill ought to be amended to incorporate the full cycle of government action. For instance, the Scope to include—
- (a) implementation on policies;
 - (b) review or reform of legislation;
 - (c) development and implementation of government programmes and projects; and
 - (d) implementation of government projects.
166. On their end they further submitted that the scope of public participation under clause 5 is limiting. They noted that the jurisprudence around public participation has grown and it is important to crystallize it and define it. An open-ended cheque may see the public participation value and principle being abused both ways.

Committee's Observation/Recommendation

The members disagreed with the proposal as the scope as provided for in the Bill was sufficient

Clause 6 (2)

167. KLRC proposed an amendment to Clause 6(2) of the Bill be by inserting the word “office” immediately after the word “public”. This is for grammatical sense.

Committee's Observations/Recommendations

The members agreed that this proposal will cure a grammatical error in the Bill.

Clause 6 (2) (a), (b) and (c)

168. The KLRC further submitted that there was a need to amend the Bill by deleting word “decision” provided in clause 6 (2). Rather, the Committee should consider using a more specific term that aligns with the scope of public participation. They submitted that the word decision is too broad and vague, noting that State organs and public offices make decisions every day.

Committee’s Observations/Recommendations

The members agreed to insert a term that will encompass the word decision.

Clause 7 (1)

169. The KLRC submitted that clause 7 of the Bill be amended to read as follows:

“Where a member of the public or an entity elects to attend a public participation exercise, the member of public or entity has the right to—

(a) make presentations either orally or by way of written submissions to a state organ or public office on the subject matter as may be determined

On their end they submitted that the right to participate is not absolute or mandatory and should not be concluded in mandatory terms.

170. Further, KLRC submitted that where a right is crafted in mandatory terms the state bears a burden that may be costly in the long run. As such, tie the election to participation with conditions that must be fulfilled by the person or entity that chooses to participate in order for this right to crystallize.

Committee’s Observations/Recommendations

The members agreed with the proposals that the right to participate should not be mandatory

Clause 8

Determination of responsible authority.

171. The KLRC suggested that clause 8 (1) be deleted indicating that is irrelevant. They noted that the words “Cabinet Secretaries” in clause 8(5) be deleted and replaced with the words “a Cabinet Secretary”. As such drafting is done in singular.

Committee’s Observation/Recommendation

Members agreed to correct typographical errors.

Clause 9 (5)

Development of specific public participation guidelines

172. KLRC submitted that subsection 5 of the Bill be expounded or deleted. They noted that it is not clear what aspect of the Statutory Instruments Act shall apply to the guidelines. Is it the process (formulation, consultation, participation, scrutiny, exemption, approval etc, categorization or substance?

Committee's Observation/Recommendation

Members disagreed with the proposal, they observed that the Statutory Instruments Act shall apply to the guidelines and Regulations.

Clause 12-Reports

173. KLRC submitted that the clause 12 be amended to include information on:

- a) a brief on the activity that necessitated the public participation (scope);
- b) the budget;
- c) list of persons or entities likely affected;
- d) mode/methodology of public participation;
- e) proof of notice;
- f) comments received and how they were dealt with

174. On their end they submitted that this sub-clause is limiting and needs to be expanded to provide proof of public participation. They noted that public participation should not be a tick in the box event.

Committee's Observations/Recommendations

Members disagreed with the proposal because it is too detailed hence difficult to Implement.

Clause 14 (1)

175. KLRC further submitted that sub-clause 14(1) be amended by deleting the word "regulation" and substituting therefore with "*a statutory instrument*". The regulations are just a type of statutory instrument. The clause should include the general term "statutory instruments".

Committee's Observations/Recommendations

Members disagreed with the proposal as the meaning of regulations was not a matter that would require strict interpretation in Kenyan parlance:

Clause 14 (2) (b)

176. KLRC further submitted that sub-clause (2) (b) of the Bill be deleted. They indicated that it is too general and vague and goes contrary to Article 94(6) of the Constitution.

Committee's Observations/Recommendations

That proposal was bound to limit the regulation making body yet the space of public participation is very fluid and keeps on changing.

General public participation guidelines.

177. KLRC submitted that the subsections (c), (d), (e), (f) and (g) of the Bill be deleted as the same were said to be repetitive as such have been mentioned in the Bill.

Committee's Observations/Recommendations

The Committee agreed with this proposal as there was a replication of the clauses

Adequate time.

178. They submitted that the Bill be amended by deleting paragraph (4) of the Schedule as such is repetition of 2.

Committee's Observations/Recommendations

Some of the recommendations had been taken into consideration in the Bill and the Attorney General had been given the mandate of implementing public participation under the policy.

4.16 COUNCIL OF GOVERNORS

Clause 1-Long title

179. The Council of Governors (COG) submitted that the long title of the Bill be amended to read as follows-

AN ACT of parliament to provide for a general framework for effective public participation; to give effect to the constitutional principles of democracy and participation of the people as provided for in the Constitution, and for connected purposes. On their end they noted that the specific provisions of the Constitution are outlined under section 4 as proposed in the section.

Committee's Observations/Recommendations

The proposal by the Council of Governors was adopted.

Clause 4 Object of the Act

180. Further, COG submitted that clause 4 of the Bill on the Objectives of the Act should be amended to read as follows '*give effect to the principles of public participation 'as provided for in Articles 1(2)/ 10(2), 35, 69(1) (d), 118, 175(c) and (d), 184 (1)(c), 196, 201 (a) and 232 (1) (d).* They noted that the amendment by the Council of governors seems to capture the entire scope of public participation and citizen engagement as envisioned by the Constitution.

Committee's Observations/Recommendations

The members agreed with the proposal to add all constitutional provisions that speak on the subject of public participation be included in the long title of the Bill.

Clause 14(2)(a) Regulations

181. In addition, the Council of Governors (COG) submitted that clause 14 (2) of the Bill should be amended to provide that the Cabinet Secretary in consultation with County Governments may make regulations for the better carrying out of the provisions of the Act.

The COG on their end noted the proposal by pointing out that the Bill also applies to County Governments as seen under section 8 and 9.

182. Consequently, the COG suggested to add a new clause in the Schedule 1(2) in determining what is meaningful and important, the authority shall take into consideration:

- (a) clarity of the subject matter;
- (b) structure and process for public participation;
- (c) access to information;
- (d) commitment to the process;
- (e) inclusive and effective representation;
- (f) a belief in the value of public input;
- (g) ability to engage and standing of the participants; and
- (h) demonstration of transparency in the process.

Similarly, GOG noted that the proposal allows uniformity of standards, policies and methodologies across the two levels of government as well as allows for harmonization of the two levels relating to public participation in line with County Public Participation Guidelines.

Schedule paragraph

183. They submitted that the schedule 4 to the Bill be amended to read as follows; *“A state organ or public office shall give the public 14 days’ notice to provide their input on the issues.”* Significantly, timeliness should be clear to avoid confusion and different interpretations.

Committee’s Observation/Recommendation

The notion of providing actual notice days was not tenable as the matters of public participation ought to be determined on a case-by-case basis as some may require a very short time while others may require a longer period of time

4.17 JOINT KIAMBU CSO’s

Title

184. The Joint Kiambu CSO’S suggested that the title of the Bill be amended to include civic education. They noted that Public Participation should be both qualitative and quantitative where the qualitative bit is dependent on civic education.

Committee’s Observation/recommendation

The Committee did not adopt the proposal because introduction of civic education will broaden the scope and shift the intention of public participation. Since it is not provided for in the constitution, members observed that there was no need to include it in the title.

Clause 2 Interpretation

185. They further proposed the amendment of the Bill by defining the term “public participation” in government is any process that involves members of the public in government decision making, noting that there should be a difference between Public Participation and Community engagement.

Observation/Recommendations

The members did not adopt the definition of the term because the Bill encompassed all aspects of public participation.

Clause 4 Object of the Act

186. The Joint Kiambu CSO’S submitted that clause 4(a) of the Bill be amended as follows: add Article 1 of the Constitution as an Object of the Act whereas 4(d) be amended to make clear that Public Awareness includes civic education. As such gives effect to the Sovereignty of the People as the main philosophy of Public Participation. Public Awareness should include civic education which is core to public participation.

Committee’s Observation/Recommendations

The committee rejected the proposal on the inclusion of civic education on grounds it is not provided as part of public participation in the Constitution of Kenya 2010.

Clause 5

187. The Joint Kiambu CSO’S suggested that clause 5 of the Bill be amended as follows;
“Without prejudice to the generality of section 3, each state organ or public office shall facilitate public participation in governance on matters including—
(a) formulation of policies;
(b) budgeting and financial management;
(c) law making processes; or
(d) any other matter as may be prescribed in the regulations”
They noted that the scope as it is, is limited and should be expanded in order to be more inclusive and cover all aspects of governance.

Committee’s Observation/Recommendations

The Committee disagreed with the proposals because it does not add value to the Bill.

Clause 6(2)(e)

Further, they averred that the word “accountability” be included to the list provided in clause 6(2) (e).

Committee’s Observation/Recommendations

The members agreed to the proposals for the purposes of assigning responsibility.

Clause 6

188. They further suggested that a new clause be amended to introduce a clause on Sovereignty of the People.

Committee's Observation/Recommendations

Disagreed with the proposals

Clause 7 (2) Rights of a Member of the public in public participation

189. The Joint Kiambu CSO'S submitted that the insertion of a new clause 7(2)(d) as follows; *"a member of the public has a right to receive timely and sufficient information prior to the Public Participation at least two weeks before the Public Participation forum"*. As such gives reasonable and definite time for the public to prepare their submissions.

Committee's Observation/Recommendations

The members disagreed with the proposal for specific timelines to be provided for in the schedule.

Clause 8 Determination of responsible authority.

190. The Joint Kiambu CSO'S averred that an independent Body to manage public participation should be established. As such ensure compliance and Monitoring and Evaluation on matters Civic Education and Public Participation.

Committee's Observation/Recommendations

The members disagreed with the proposal of forming a body since the Attorney General is the responsible authority.

Clause 12-Reports

191. The Joint Kiambu CSOs averred that the insertion of new clauses on—
- a) description of financial implications;
 - b) number and description of matters subjected to public participation and Civic education;
 - c) reporting of disaggregated data on attendance on public participation; and
 - d) reporting of the Public Participation reports filed.
- As that holds the bodies carrying out public participation accountable.

Committee's Observation/Recommendations

Disagreed with the proposals as it is not practical for the state agents to adhere to those set out guidelines.

Clause 13 Penalty

192. CSOs asserted that the clause to be amended include the offences.

Schedule

General public participation guidelines—Credibility and integrity of the Process.

193. The Joint Kiambu CSO's proposed that clause 7 of the Bill be amended in paragraph 7(c) to be amended as follows—

“the state organ or public body shall not engage in conduct involving dishonesty, fraud, deceit, misrepresentation or discrimination”

In their justification the Joint noted that any withholding of important budget documents from members of the public is equivalent to dishonesty, deceit and discrimination. As such the proposed Authority will ensure all key budget documents are provided publicly.

Committee's Observation/Recommendations

The members disagreed with the proposal as the fines were deemed to be too punitive.

4.18 KENYA ASSOCIATION OF MANUFACTURERS

Clause 6. Conduct of public participation.

194. The KAM submitted that the Bill be amended by adding the following paragraphs to section 6(2) **“state needs to consider when determining what is reasonable in the section as follows “**

- (f) Community Engagements based on the relevance and interest of the subject matter to the public.
- (g) Timeliness and Notification standards for providing adequate notice to the public.
- (h) Feedback Mechanisms feedback collection to assess the effectiveness of the participation process.
- (i) Accessibility Measures to ensure provisions for accommodating diverse needs.

They submitted that Section 6 of the Bill mentions the provision of “reasonable and meaningful opportunities” for public participation without **defining clear standards for determining reasonableness.**

They noted the inclusion of specific criteria or metrics to ensure consistent and fair implementation across various scenarios. They further submitted that the state organ should encourage a consultative approach in determining reasonableness involving stakeholders, experts and the public in the development and review of standards for public participation opportunities.

Committee Observations and Recommendations

The Committee agreed to the proposal on clause 6(2) (g), they observed that there is a need to include timelines and notification standards.

Clause 7 (1)

195. They suggested that a sub-clause be added as: (4) The responsible authority shall institute measures to prevent undue influence, coercion or manipulation of participants during public participation. They noted that it is based on the fact that the clause grants rights to individuals or entities likely to be affected but lacks clarity on how these rights will be

protected. To safeguard the public participation process from discrimination, undue influence or manipulation, ensuring fair and unbiased engagement.

Committee's Observations and Recommendations

The committee adopted the proposal to safeguard public participation from discrimination.

Clause 8

Determination of responsible authority.

196. KAM noted that this clause is amended to designate the specific roles, responsibilities and collaboration mechanisms between responsible authorities. In their justification, they submitted based on the following:

- a) The Clause has specified responsible authorities for different bodies without delineating clear roles or potential overlaps.
- b) The proposal will include provisions for conflict resolution or coordinated efforts in cases of overlapping jurisdictions.

Committee's Observation/Recommendations

The committee rejected the proposal because it is not provided in the instruments.

Clause 9 (1)

Development of specific public participation guidelines

197. KAM submitted that the clause be amended as follows:

- (1) The guidelines developed by a responsible authority under subsection (1) shall include the requirements set out in the general guidelines for public participation in the schedule and shall
 - (a) Include specific requirements beyond what is required under the general guidelines for public participation under the Schedule
 - (b) Provide for the manner in which any requirements of the specific or general guidelines may be satisfied.

On their end they submitted based on the following:

- a) To establish a clear and accessible method for the dissemination of specific guidelines to the public, ensuring easy access and understanding;
- b) Expand on the mechanisms for providing adequate notice for public participation.
- c) Include guidelines that guarantee transparent documents and dissemination of final decisions made based on public input.

They noted that to strengthen provisions for fairness, equality and accessibility for all participants, including those with disabilities or limited language proficiency.

Committee's Observations/Recommendations

The Committee disagreed with the proposal because the provision in the Bill is satisfactory.

Clause 12

Reports

198. The KAM suggested that sub-clause (4) should be amended to read:

“12 (4) Reports of public participation shall be mandatorily published on the official website of the relevant institution and concurrently disseminated in hard copy format to all stakeholders and interested parties.” In their justification, they suggested based on the following:

- a) By combining both digital and physical means of publication, institutions cater to a broader spectrum of people, enhancing inclusivity, transparency and credibility of their public participation efforts.
- b) To further promote Transparency and Accessibility, Inclusivity, Accountability and Legal Compliance.

Committee’s Observations/Recommendations

The committee disagreed with the proposal because it’s not cost effective to provide documentation to all stakeholders.

Clause 13 Penalty

199. The Association further submitted that clause 13 on penalty be amended as follows: “13

A person who contravenes a provision of the Act commits an offence and shall upon conviction be liable to a fine not exceeding One Million shillings or imprisonment for a term not exceeding six months or both. “They submitted that proper, inclusive and thorough public participation is the cornerstone of democracy and good governance. This will act as a deterrent and ensure that all public bodies adhere to their duty to keep the public informed on the issues that affect them.

Committee Observations/Recommendations

The Committee disagreed with the proposal as the proposed fines are punitive.

Schedule—General public participation guidelines.

Paragraph 2 Notice.

Amend as follows

200. They suggested that section 2 should be amended to read as: *“A state organ or public officer shall give the public not less than 45 days to make their input on the issue.”*

They submitted their suggestions based on the following justifications:

leaving the amount of time that state and public offices can give the public to provide input may lead to abuse and inconsistency.

Some agencies only provide less than one week for the public to give their feedback. This is insufficient.

Committee Observations/Recommendations

The issue of prescribing the number of days of notice may not be practical and entities should be allowed to set their own timelines.

Schedule

General public participation guidelines.

Processing of responses.

201. They submitted that a paragraph be included that mandates state organs or public offices to provide written feedback to the persons or companies that submitted written memoranda. They further submitted that a lot of people and companies submit written memoranda in response to a request for public participation by a public office.

NEW CLAUSE ON DISPUTE RESOLUTION

202. They asserted that a new clause should be inserted on dispute resolution, noting that some public issues such as policies and Bills often evoke great public interest. They further submitted that it is advisable that differences may arise between members of the public and state organ or public office. They suggested dispute resolution to effectively cater for the dispute.

Committee Observations/Recommendations

The Committee agreed to this proposal of the need set up a dispute resolution mechanism under this Act.

4.19 KENYA YOUTH FEDERATION

203. The Kenya Youth Federation submitted its memorandum to the committee and suggested the inclusion of the word genuine in the definition of the term “public participation” -
204. They further stated that at the definition of the term public participation should be simplified to a language that the public can understand

Committee Observations/ Recommendations

The definition of the term “public participation” as provided for in the Bill is sufficient.

4.20 HEALTH NGO NETWORKS

205. The health NGO Network submitted that the title of the Bill should be amended to include the words civic education, noting that civic education and Public Participation are closely linked and intertwined.

Committee Observations/ Recommendations

The definition of the term “Publication” as provided for in the Bill is sufficient and including the word civic education was going to widen the scope of the Bill.

206. The Health Ngo network proposed that the title of the Bill be amended to include all the constitutional provisions that dealt with public participation.

Committee's Observations/ Recommendations

The committee agreed with the proposal that the long title of the Bill be amended to include all constitutional articles that provide for public participation.

Interpretation section

207. The Health NGO network also sought to have the definition of public participation changed to have the Cabinet Secretary for Public Service as the responsible Cabinet secretary

Committee Observations/ Recommendations

The Committee did not agree with this proposal as the Attorney general was the designated Cabinet Secretary.

208. Health NGO network also sought to have the Bill amended in the definition of public participation to include planning, budgeting, evaluation and auditing

Committee Observations/ Recommendations

The definition of public participation as provided for in the Bill was all encompassing.

Objects of the Act

209. The Health NGO network sought to have an additional object on civic education included as they observed that civic education was an important ingredient for public participation.

Committee Observations/ Recommendations

The additional object as proposed was bound to unnecessarily expand the scope of the Bill and was not be implementable in the long run.

General public Guidelines

210. The Health NGO network also made submissions on several paragraphs of the General Provisions that included clearing ambiguity in the sections. Proving for specific days for notice as opposed to using the words "adequate notice" as has been used in the Bill.

Committee Observations/ Recommendations

The recommendations by health NGO network have been stated by other stakeholders and on the aspect of not charging the public any cost for accessing information it was observed that the Access to information Act provides for that.

4.21 INSTITUTE OF PUBLIC FINANCE

They submitted as follows; -

Scope of public participation under Clause 5.

211. The proposal aimed at ensuring that each state organ or public office shall facilitate public participation on matters relating to budgeting and financial management. Substantial evidence shows that there are gaps in legislative oversight and public participation during two stages of the budget cycle i.e. the implementation and audit stages. For example, the PFM Act 2012 section 166(c) is not clear on how public participation should be undertaken which should be a crucial priority but only indicates that the quarterly reports shall published and publicized.

They proposed on provision of clarity on how public participation should be carried out not only in these two stages but also in all matters budgeting and financial management to foster Transparency, and Accountability as entrenched in the law.

Committee Observations/Recommendation

The provision as provided in the Bill is sufficient.

Determination of the responsible authority under Clause 8.

212. The Bill proposes what body is the responsible authority including the relevant committee in each House, the Chief Justice for the Judiciary, Cabinet Secretaries for Government ministries and state corporations, county assembly committee responsible for rules and procedures and the county secretary for the county executive which is highly commendable. They proposed that there is need provide clear guidance on the responsible authority.

Committee Observations/Recommendation

The provisions on the responsible authority as provided for in the Bill are sufficient.

Budget allocation on public participation under Clause 11 and 12.

213. Reportedly, inadequate resources for purposes of undertaking public participation is one of the key impediments to meaningful public participation at both the national and sub national level in Kenya. While the Bill proposes that a state organ or public office shall provide the necessary resources under this Act and shall include in its annual estimates provisions for expenses for purposes of undertaking public participation. They proposed provision of guidelines and mechanisms to ensure prioritization for adequate resourcing for purposes of undertaking public participation. Public Participation is entrenched in the law as a national value and principle of governance, and its processes should be adequately funded to achieve its objective.

Committee Observations/Recommendation

The Committee agreed that there is a need to secure resources to be used in the public implementation of the Public Participation Bill. That there is need for the definition of adequate notice given to the public for them to make their input on the issue.

214. The schedule provides a set of general guidelines for public participation. Among them is, the state organ should give the public adequate notice to make their input on the issue. However, the term “adequate notice” is not explicit. The bill to be very clear on the timelines

Committee Observations/Recommendations

The definition of the exact time as provided for in the Bill is sufficient.

Provision of feedback to the public.

215. The Bill proposes that the state organ should communicate the final decisions made and the reasons for the decisions made to the public which is commendable. However, there is no timeline provided for when the public should expect feedback as well as the mechanism which will be adopted to relay feedback to the public. An example of a best practice which could be borrowed is from Nairobi City County Public Participation Act 2015, section 10(3) b which indicates that feedback on the action taken on issues raised should be provided within thirty (30) days of the forum.

Committee Observations/Recommendations

The Committee did not agree with the proposal

Scope of public participation under Clause 5.

216. The proposal aimed at ensuring that each state organ or public office shall facilitate public participation on matters relating to budgeting and financial management. Substantial evidence shows that there are gaps in legislative oversight and public participation during two stages of the budget cycle i.e., the implementation and audit stages. For example, the PFM Act 2012 section 166(c) is not clear on how public participation should be undertaken which should be a crucial priority but only indicates that the quarterly reports shall published and publicized.

They proposed a provision of clarity on how public participation should be carried out not only in these two stages but also in all matters budgeting and financial management to foster Transparency, and Accountability as entrenched in the law.

Committee Observations/Recommendation

The provision as provided in the Bill was sufficient.

Determination of the responsible authority under Clause 8.

217. The Bill proposes what body is the responsible authority including the relevant committee in each House, the Chief Justice for the Judiciary, Cabinet Secretaries for Government ministries and state corporations, county assembly committee responsible for rules and

procedures and the county secretary for the county executive which is highly commendable. They proposed that there is need provide clear guidance on the responsible authority.

Committee Observations/Recommendation

The Bill as provided is sufficient.

Budget allocation on public participation under Clause 11 and 12.

218. Reportedly, inadequate resources for purposes of undertaking public participation is one of the key impediments to meaningful public participation at both the national and sub national level in Kenya. While the Bill proposes that a state organ or public office shall provide the necessary resources under this Act and shall include in its annual estimates provisions for expenses for purposes of undertaking public participation. They proposed provision of guidelines and mechanisms to ensure prioritization for adequate resourcing for purposes of undertaking public participation. Public Participation is entrenched in the law as a national value and principle of governance, and its processes should be adequately funded to achieve its objective.

Committee Observations/Recommendation

The Committee agreed that there is a need to secure resources to be used in the Public implementation of the Public Participation Bill.

Provision of feedback to the public.

219. The Bill proposes that the state organ should communicate the final decisions made and the reasons for the decisions made to the public which is commendable. However, there is no timeline provided for when the public should expect feedback as well as the mechanism which will be adopted to relay feedback to the public. An example of a best practice which could be borrowed is from Nairobi City County Public Participation Act 2015, section 10(3) b which indicates that feedback on the action taken on issues raised should be provided within thirty (30) days of the forum.

Committee Observations/Recommendations

The Committee did not agree with the proposal

4.22 WOMEN CHALLENGED TO CHALLENGE

220. Women challenged in their submission to the Committee proposed to amend the Schedule of the Bill as follows:-

(j) reasonable accommodations that persons with disabilities may require to participate meaningfully, including qualified sign language interpreters, physical accessible infrastructures and documents provided in braille and large print.

They propounded in their submission that the Constitution 2010 in Article 7 cites sign language as one of the national and official languages in Kenya. the Convention on the Rights of Persons with Disabilities Article 2, that defines reasonable accommodation as

necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure persons with disabilities enjoy or exercise on an equal basis with others on all human rights and fundamental freedoms and Article 21 that talks on Freedom of expression and opinion, and access to information. Therefore, there is a need to ensure that during public participation, these considerations are taken to allow persons with disabilities to engage meaningfully in public participation proceedings.

Committee Observations/Recommendation

The Committee agreed that the law should make provisions that will ensure accommodation of persons with disabilities for them to be able to engage fully in public participation.

4.23 DR. M. J OKUMU, AN ADVOCATE

Clause 2

221. Dr. M. J Okumu made his submissions before the Committee where he sought to have the definition of public participation be amended by inserting the word “genuine” immediately after the words “means the”. In his justification, he noted that the consideration improves the description taking into account the fact that there is no single definition on the public participation. He pointed out that public participation considers international conventions, treaties including AU Agenda 2063 as a right.

Observations/Recommendations

The members did not adopt the proposal because it is not clear what qualifies genuinity in public participation.

Clause 7 (2)

Rights of a Member of the public in public participation

222. Dr. Okumu further submitted that during public participation adequate time should be given to persons wishing to engage on a subject matter and he opined that an estimate of 2 to 3 minutes would be adequate per person, save for when experts are making submission in which instance, he opined that there should be an extension of time.

Observations/Recommendations

This proposal was deemed to be prescriptive and administrative and therefore could not be included in the Bill.

Clause 9 (1)

Development of specific public participation guidelines

223. Dr. Okumu submitted that the Bill should be amended to provide for a specific timeframe and in his view six months would suffice.

Observations/Recommendations

This proposal to set a time frame of 6 months is being prohibitive and could vary on a case-by-case basis.

Clause 13 Penalty

224. On the Penalty, Dr. Okumu proposed that the Bill should be amended to enhance the fine to a minimum fine of 1 million. He noted the importance of public participation, to avoid doing public participation as a cosmetic activity.

Observation

The Committee was of the opinion that the proposed fine was punitive.

Schedule General public participation guidelines.

Access to public participation processes.

225. On access to public participation processes, Dr. Okumu proposed that the coverage should be wide to include at least 3 radio stations, churches, chamas, youth groups, women groups, and PWDs.

Observations/recommendations

The general observation was to ensure that publicity on public participation was elaborate and of wide reach so as to get the views of the citizens

Schedule

General public participation guidelines.

Adequate time.

226. Dr. Okumu further submitted that WhatsApp groups should be registered with the county department of public participation.

Observations/recommendations

The Committee did not agree with the proposal as it would be so difficult to implement and will call for things like consent which would ultimately hamper public participation.

Access to information for public participation

227. Dr. Okumu suggested the bill be amended to include the aspect of utilization of the roadshows to circulate the summary documents particularly on budget in local vernacular language in advance for citizens to participate.

Observations/recommendations

The general observation was to ensure that publicity on public participation was elaborate and of wide reach so as to get the views of the citizens

PART FIVE

5 COMMITTEE OBSERVATIONS

228. Upon reviewing the Bill and the submissions received, the Committee made the following observations:

- i) The Public Participation Policy has designated the Attorney General as the entity responsible for coordinating and implementing all matters related to public participation. Since there is no Cabinet Secretary responsible for justice, this clarification will help mitigate any potential conflicts regarding public participation in the Country;
- ii) There is need to incorporate a well-established dispute resolution mechanism into the Bill;
- iii) It is crucial to guarantee the participation of special interest groups in public engagement as this will serve as an effective measure of how both government and public individuals are fostering inclusivity, which is a fundamental objective of this legislation;
- iv) The Bill be amended to ensure that persons living with disabilities enjoy or exercise their rights on an equal basis with all human rights and fundamental freedoms in line with the Convention on the Rights of Persons with Disabilities; and
- v) Dictating specific time frames for the notice period in the law would be prescriptive and restrictive, as matters of public participation vary across sectors and may necessitate different durations.

PART SIX

6 COMMITTEE RECOMMENDATION

229. The Committee having considered the Public Participation Bill, 2023 (National Assembly No. 52 of 2023) recommends that the House approves the Bill with the proposed amendments

LONG TITLE

THAT, the long title of the Bill be deleted and substituted by the following new long title—

“AN ACT of Parliament to provide for a general framework for effective public participation; to give effect to the constitutional principles of democracy and participation of the people under Articles 1, 10(2), 35(3), 37, 69(1)(d), 94(2), 95(2), 118, 174(c), 184(1)(c), 196, 201(a), 221(5), 232 of the Constitution; and for connected purposes”

Justification

The Bill, seeks to provide for public participation and the draft long title of the Bill has hived off and provided for specific Articles from the constitution that deal with public participation, to the exclusion of others. The amendment therefore seeks to ensure that all constitutional provisions that speak on public participation are included in the long title of the Bill.

CLAUSE 2

THAT, clause 2 of the Bill be amended by—

(a) deleting the definition of “Cabinet Secretary” and substituting thereof the following new definition—

“Cabinet Secretary” means the Attorney General;

Justification:

The Bill in the definition of Cabinet Secretary makes reference to the cabinet secretary for the time being responsible for Justice and includes the Attorney General, yet the office that is in existence is that of the Attorney General, which office is seized with matters of public participation and has since coordinated the formulation of a Policy on Public participation. The amendment therefore seeks to clarify the meaning of Cabinet Secretary as far as this Act is concerned.

(b) deleting the definition of “public participation” and substituting thereof the following new definition—

“public participation” means the process by which citizens, as individuals, groups or communities take part in the conduct of public affairs, interact with the state and other non-state actors to influence decision policies, programs, legislation and provide oversight in service delivery development and other matters concerning their governance and public interest either directly or indirectly through freely chosen representatives; and

Justification

The definition of public participation as provided for in the Bill is not comprehensive and therefore there is a need to come up with an elaborate definition of the term public participation.

(c) inserting the following new definitions in their proper alphabetical order—

“access” includes access to information and services, fittings, amenities, built environments and infrastructure”

“access to information “includes ensuring the provision of braille, sign language, large texts, websites and local languages”

“meaningful participation” means a process that deliberately aims at engaging members of the public in a purposeful and real process that seeks their input to inform a public decision.

Justification

The Committee and the stakeholders were of the view that the terms “access”, “access to information” and “meaningful participation” had been used repeatedly in the Bill, and there was therefore a need to define them and to provide clarity for the user of this Bill.

CLAUSE 4

THAT, clause 4 of the Bill be amended by deleting paragraph (a) and substituting thereof the following new paragraph—

“(a) give effect to the principles of public participation as provided for in Articles 1, 10(2), 35(3), 37, 69(1)(d), 94(2), 95(2), 118, 174(c), 184 (1)(c), 196, 201(a), 221(5), 232 of the Constitution; and

Justification

The amendment has been occasioned by the fact that there is a need to expand the object and purpose of the Bill as had been set out in clause 4, paragraph (a). The Bill, seeks to

provide for public participation and the bill as drafted in the objects of the Act has provided for specific Articles from the constitution that deal with public participation, to the exclusion of others. The amendment therefore seeks to ensure that all constitutional provisions that touch on public participation are included in the objects of the Bill.

CLAUSE 6

THAT, clause 6 of the Bill be amended in sub clause (2) by —

- (a) inserting the word “office” immediately after the words “state organ or public”; and

Justification

The amendment seeks to provide clarity and correction of an error, the term “office” had been omitted erroneously from the clause.

- (b) inserting the words “including the recognition of the need for suitable accommodation” immediately after the words “effective representation” appearing in paragraph (d).

Justification

The amendment seeks to ensure that the Bill in its entirety does not lose sight of the need if inclusivity particularly to ensure that persons with disabilities are accorded an opportunity to participate in decisions and forums where matters of importance are being undertaken.

CLAUSE 7

THAT, clause 7 of the Bill be amended in sub clause (2) by deleting the words “either orally” appearing in paragraph (b) immediately after the word “presentations” and substituting thereof the words “orally, by sign language”.

Justification

The amendment seeks to ensure that the Bill in its entirety does not lose sight of the need if inclusivity particularly to ensure that persons with disabilities are accorded an opportunity to participate in decisions and forums where matters of importance are being undertaken.

CLAUSE 9

THAT, clause 9 of the Bill be amended in—

- (a) in sub clause (1) by inserting the words “operational or administrative” immediately after the words “shall develop”;

Justification

The bill seeks to qualify that the guidelines that are to be formulated by responsible authorities are to be operational and administrative guidelines.

(b) in sub clause (2) by inserting a new paragraph immediately after paragraph (c)—

“(c) provide specific guidelines on the participation of persons living with disability in accessible means of communication including braille, sign language or other appropriate means of communication”;

Justification

The amendment seeks to ensure that the Bill in its entirety does not lose sight of the need if inclusivity particularly to ensure that persons with disabilities are accorded an opportunity to participate in decisions and forums where matters of importance are being undertaken.

(c) by deleting sub clause (5) and substituting thereof the following new subclause—

(5) “Where there is a conflict between the provisions of this Act and any other written law, the provisions of this Act shall prevail.”

Justification

The amendment seeks to give seeks to give supremacy to this law on public participation once enacted as far as matters of public participation are concerned.

CLAUSE 12

THAT, clause 12 of the Bill be amended in subsection (4) by inserting the following paragraph immediately after paragraph (a)—

“(aa) disaggregated demographical data of the number of special groups, in particular persons living with disabilities who participated in the public participation forums”

“(ab) information on the processes and the achievements of the public participation including—

- (i) number of forums;
- (ii) activities that necessitated public participation;
- (iii) the budget;
- (iv) mode of public participation;
- (v) proof of notice; and
- (vi) comments received and how they were dealt with”.

Justification

The proposed amendment seeks to ameliorate the provisions on reports developed by entities on conducted public participation. The Bill therefore places the onus on any public organ or office that conduct public participation to ensure that it desegregates demographic data specifying the particulars and number of persons with disabilities attended the forum. Further the entities are required to include additional information in their reports that include, the number of forums held, the budget, mode of public participation, among others.

CLAUSE 13

THAT, clause 13 of the Bill be amended by deleting the words “no fine” appearing after the words “liable to a fine”.

Justification

The amendment seeks to correct a typographical error that exists in the Bill.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clauses immediately after clause 13—

Dispute resolution.

13A. The Attorney General shall, in consultation with institutions mandated to handle public complaints, promote alternative dispute resolution methods in the resolution of complaints relating to public participation.

Registrar of Public Participation.

13B. (1) There is established an office to be known as the Office of the Registrar of Public Participation (hereinafter referred to as the Office).

(2) The functions of the Office shall be to—

- (a) develop and coordinate the regulatory framework for public participation;
- (b) monitor compliance with established public participation standards;
- (c) provide expert advice to government agencies and civil societies on effective public participation practices; and

- (d) issue public reports on compliance issues highlighting identifies strengths and weaknesses in public participation processes.

Justification

The amendment seeks to make provisions for dispute resolution, as it may arise in the sector which clause in new and not provided for in the Bill. The bill also seeks to establish and set out the functions of the office of the Registrar of public participation, housed by the Attorney General.

SCHEDULE

THAT, the schedule to the Bill be amended—

- (a) in paragraph 1 by inserting the following new subparagraph immediately after subparagraph (i)—
 - (j) “need for suitable accommodation that a person living with disability may require to participate meaningfully, including qualified sign language, interpreters, physically accessible infrastructure and documents provided in braille/large print”;
- (b) in paragraph 2(2) by inserting the words “that are adherent to KS 2952 – Accessibility - ICT Products and Services by the Kenya Bureau of Standards” immediately after the word “website” appearing in subparagraph (c);
- (c) in paragraph 2 by inserting the following new subparagraphs immediately after subparagraph (f)—
 - “(fa) notice boards;”
 - “(fb) social media;”
 - “(fc) markets;”
- (d) in paragraph 3(2) by inserting the following new words “and all various categories of vulnerabilities” immediately after the words “persons with disabilities”;
- (e) by deleting paragraph 4;
- (f) in paragraph 5(1) by inserting the following new words “as well as Kenyan sign language, Braille, electronic and other alternative and augmentative communication methods” immediately after the word “public” appearing in subparagraph (b); and

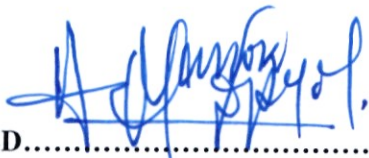
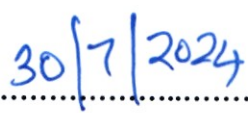
(g) in paragraph 5 by inserting the following new subparagraph immediately after subparagraph (b)—

“(c) ensure that the documents distributed are easily accessible by persons with special needs”

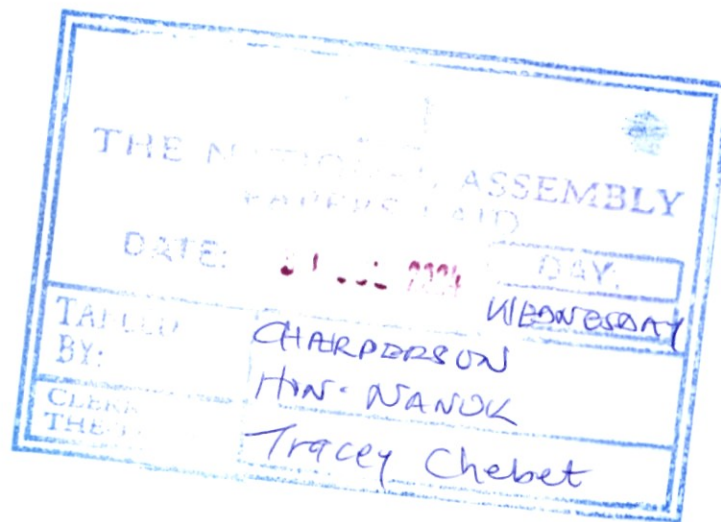
Justification

The proposed amendment seeks to amend the Schedule to the Bill by providing for access and reasonable accommodation that persons living with disability may require to participate meaningfully, including qualified sign language, interpreters, physically accessible infrastructure and documents provided in braille/large print.

Further the Bill seeks to also provide for other avenues that may be utilised in publicising events of forums of public participation which may include notice board, social media, markets and churches in a bid to ensure that there is wide coverage of the notices on public participation to all citizens.

SIGNED.......... DATE..........

HON. DANIEL EPUYO NANOK, CBS, MP – CHAIRPERSON
COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY



ANNEXURE 1: REPORT ADOPTION SCHEDULE



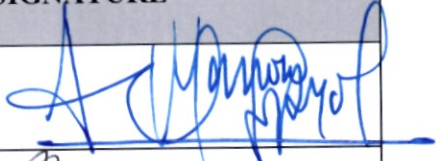
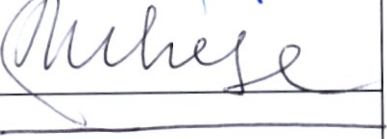
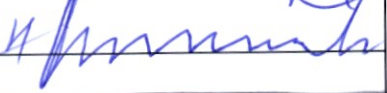
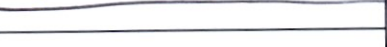
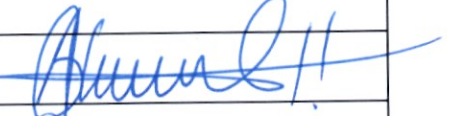
THE NATIONAL ASSEMBLY
13TH PARLIAMENT – 3RD SESSION (2024)

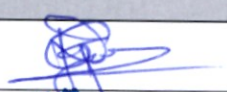
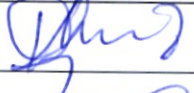
COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY

ADOPTION LIST

Report on the consideration of the Public Participation Bill, 2023

We, the undersigned, hereby affix our signatures to this report to affirm our approval:

	HON. MEMBER	SIGNATURE
1.	The Hon. Daniel Epuyo Nanok, CBS, M.P. - Chairperson	
2.	The Hon. (Eng.) John Kiragu Chege, M.P. – Vice-Chairperson	
3.	The Hon. Mohamed Mohamed Ali, MP	
4.	The Hon. Raphael Sauti Wanjala, M.P.	
5.	The Hon. James Gakuya Mwangi, M.P.	
6.	The Hon. Moses Malulu Injendi, M.P.	
7.	The Hon. John Waluke Koyi, M.P.	
8.	The Hon. Timothy Wanyonyi Wetangula, M.P.	
9.	The Hon. Oscar Kipchumba Sudi, M.P.	
10.	The Hon. Rindikiri Mugambi Murwithania, M.P.	
11.	The Hon. Adams Kipsanai Korir, M.P.	
12.	The Hon. Anthony Kenga Mupe, M.P.	
13.	The Hon. Abdirahman Mohamed Abdi, M.P.	
14.	The Hon. Charles Onchoke Mamwacha, M.P.	

	HON. MEMBER	SIGNATURE
15.	The Hon. George Gachagua, M.P.	
16.	The Hon. (Dr.) John Ariko Namoit, M.P.	
17.	The Hon. Josses Kiptoo Lelmengit, M.P.	
18.	The Hon. Kitilai Ole Ntutu, M.P.	
19.	The Hon. Phelix Odiwuor Khodhe, M.P.	
20.	The Hon. Suzanne Ndunge Kiamba, M.P.	
21.	The Hon. Talib Ahmed Abubakar, M.P.	

ANNEXURE 2: MINUTES

MINUTES OF THE 20TH SITTING OF THE COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY HELD IN ROOM 11, 2ND FLOOR, BUNGE TOWER, MAIN PARLIAMENT BUILDINGS ON TUESDAY, 30TH JULY, 2024 AT 12.00 PM.

PRESENT

1. The Hon. Daniel Epuyo Nanok, M.P. - **Chairperson**
2. The Hon. (Eng.) John Kiragu Chege, M.P.- **Vice Chairperson**
3. The Hon. Moses Malulu Injendi, M.P.
4. The Hon. John Waluke Koyi, M.P.
5. The Hon. Charles Onchoke Mamwacha, M.P.
6. The Hon. George Gachagua, M.P.
7. The Hon. Abdirahman Mohamed Abdi, M.P.
8. The Hon. Kitilai Ole Ntutu, M.P.
9. The Hon. Phelix Odiwuor Khodhe, M.P.
10. The Hon. Talib Mohamed Abubakar, M.P.
11. The Hon. James Gakuya Mwangi, M.P.
12. The Hon. Adams Kipsanai Korir, M.P.
13. The Hon. Anthony Kenga Mupe, M.P.
14. The Hon. Josses Kiptoo Lelmengit, M.P.
15. The Hon. (Dr.) John Ariko Namoit, M.P.

APOLOGIES

1. The Hon. Mohamed Mohamed Ali, M.P.
2. The Hon. Raphael Sauti Wanjala, M.P.
3. The Hon. Timothy Wanyonyi Wetangula, M.P.
4. The Hon. Oscar Kipchumba Sudi, M.P.
5. The Hon. Rindikiri Mugambi Murwithania, M.P.
6. The Hon. Suzanne Ndunge Kiamba, M.P.

SECRETARIAT

- | | |
|----------------------------|-------------------------|
| 1. Ms. Ella Kendi | Clerk Assistant I |
| 2. Ms. Fidlizah S. Mwagogo | Clerk Assistant III |
| 3. Ms. Mercy Wanyonyi | Senior Legal Counsel |
| 4. Mr. Silas Korir Lomutur | Research Officer III |
| 5. Ms. Noelle Chelagat | Media Relations Officer |
| 6. Mr. Jared Onyancha | Protocol Officer |
| 7. Ms. Jacinta Maru | Serjeant at Arms |
| 8. Mr. Derrick Cheboi | Audio Officer Intern |

AGENDA

- I. Preliminaries
 - i) Prayers
 - ii) Adoption of the Agenda
2. Confirmation of the Minutes of the previous sitting
3. Matters Arising
4. **Adoption of the draft report on consideration of the draft report on consideration of the Public Participation Bill, 2023**
5. Any other Business
6. Adjournment and date of the next meeting

MIN NO/DAA&GPC/PBL/2024/073: PRELIMINARIES

The meeting was called to order at ten minutes past twelve in the (12.10 p.m.), followed by a word of prayer and introductions thereafter. The agenda of the meeting was adopted having been proposed by Hon. Charles Onchoke Mamwacha, M.P and seconded by Hon. Moses Malulu Injendi, M.P.

MIN NO/DAA&GPC/PBL/2024/074: CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETINGS

The confirmation of minutes was deferred to the next sitting.

MIN NO/DAA&GPC/PBL/2024/075: ADOPTION OF THE DRAFT REPORT ON CONSIDERATION OF THE DRAFT REPORT ON CONSIDERATION OF THE PUBLIC PARTICIPATION BILL 2023

The Committee was taken through the following observations and recommendations and unanimously adopted the report on consideration of the Public Participation Bill, 2023 having been proposed by Hon. Moses Malulu Injendi, MP and seconded by Hon. Kitilai Ole Ntutu. MP.

Committee Observations

Upon reviewing the Bill and the submissions received, the Committee made the following observations:

- i) The Public Participation Policy has designated the Attorney General as the entity responsible for coordinating and implementing all matters related to public participation. Since there is no Cabinet Secretary responsible for justice, this clarification will help mitigate any potential conflicts regarding public participation in the Country;
- ii) There is need to incorporate a well-established dispute resolution mechanism into the Bill;
- iii) It is crucial to guarantee the participation of special interest groups in public engagement as this will serve as an effective measure of how both government and public individuals are fostering inclusivity, which is a fundamental objective of this legislation;

- iv) The Bill be amended to ensure that persons living with disabilities enjoy or exercise their rights on an equal basis with all human rights and fundamental freedoms in line with the Convention on the Rights of Persons with Disabilities; and
- v) Dictating specific time frames for the notice period in the law would be prescriptive and restrictive, as matters of public participation vary across sectors and may necessitate different durations.

Committee Recommendations

The Committee having considered the Public Participation Bill, 2023 (National Assembly No. 52 of 2023) recommends that the House approves the Bill with the proposed amendments;

LONG TITLE

THAT, the long title of the Bill be deleted and substituted by the following new long title—
 “AN ACT of Parliament to provide for a general framework for effective public participation; to give effect to the constitutional principles of democracy and participation of the people under Articles 1, 10(2), 35(3), 37, 69(1)(d), 94(2), 95(2), 118, 174(c), 184(1)(c), 196, 201(a), 221(5), 232 of the Constitution; and for connected purposes”

Justification

The Bill, seeks to provide for public participation and the draft long title of the Bill has hived off and provided for specific Articles from the constitution that deal with public participation, to the exclusion of others. The amendment therefore seeks to ensure that all constitutional provisions that speak on public participation are included in the long title of the Bill.

CLAUSE 2

THAT, clause 2 of the Bill be amended by—

- (a) deleting the definition of “Cabinet Secretary” and substituting thereof the following new definition—

“Cabinet Secretary” means the Attorney General;

Justification:

The Bill in the definition of Cabinet Secretary makes reference to the cabinet secretary for the time being responsible for Justice and includes the Attorney General, yet the office that is in existence is that of the Attorney General, which office is seized with matters of public participation and has since coordinated the formulation of a Policy on Public participation. The amendment therefore seeks to clarify the meaning of Cabinet Secretary as far as this Act is concerned.

- (b) deleting the definition of “public participation” and substituting thereof the following new definition—

“public participation” means the process by which citizens, as individuals, groups or communities take part in the conduct of public affairs, interact with the state and other non-state actors to influence decision policies, programs, legislation and provide oversight in service delivery development and other matters concerning their governance and public interest either directly or indirectly through freely chosen representatives; and

Justification

The definition of public participation as provided for in the Bill is not comprehensive and therefore there is a need to come up with an elaborate definition of the term public participation.

(c) inserting the following new definitions in their proper alphabetical order—

“access” includes access to information and services in an affordable manner, fittings, amenities, built environments and infrastructure”

“access to information “includes ensuring the provision of braille, sign language, large texts, websites and local languages”

“meaningful participation” means a process that deliberately aims at engaging members of the public in a purposeful and real process that seeks their input to inform a public decision.

Justification

The Committee and the stakeholders were of the view that the terms “access”, “access to information” and “meaningful participation” had been used repeatedly in the Bill, and there was therefore a need to define them and to provide clarity for the user of this Bill.

CLAUSE 4

THAT, clause 4 of the Bill be amended by deleting paragraph (a) and substituting thereof the following new paragraph—

“(a) give effect to the principles of public participation as provided for in Articles 1, 10(2), 35(3), 37, 69(1)(d), 94(2), 95(2), 118, 174(c), 184 (1)(c), 196, 201(a), 221(5), 232 of the Constitution; and

Justification

The amendment has been occasioned by the fact that there is a need to expand the object and purpose of the Bill as had been set out in clause 4, paragraph (a). The Bill, seeks to provide for public participation and the the bill as drafted in the objects of the Act has provided for specific Articles from the constitution that deal with public participation, to the exclusion of others. The amendment therefore seeks to ensure that all constitutional provisions that touch on public participation are included in the objects of the Bill.

CLAUSE 6

THAT, clause 6 of the Bill be amended in subclause (2) by —

- (a) inserting the word “office” immediately after the words “state organ or public”; and

Justification

The amendment seeks to provide clarity and correction of an error, the term “office” had been omitted erroneously from the clause.

- (b) inserting the words “including the recognition of the need for reasonable accommodation” immediately after the words “effective representation” appearing in paragraph (d).

Justification

The amendment seeks to ensure that the Bill in its entirety does not lose sight of the need if inclusivity particularly to ensure that persons with disabilities are accorded an opportunity to participate in decisions and forums where matters of importance are being undertaken.

CLAUSE 7

THAT, clause 7 of the Bill be amended in sub clause (2) by deleting the words “either orally” appearing in paragraph (b) immediately after the word “presentations” and substituting thereof the words “orally, by sign language”.

Justification

The amendment seeks to ensure that the Bill in its entirety does not lose sight of the need if inclusivity particularly to ensure that persons with disabilities are accorded an opportunity to participate in decisions and forums where matters of importance are being undertaken.

CLAUSE 9

THAT, clause 9 of the Bill be amended in—

- (a) in subclause (1) by inserting the words “operational or administrative” immediately after the words “shall develop”;

Justification

The bill seeks to qualify that the guidelines that are to be formulated by responsible authorities are to be operational and administrative guidelines.

- (b) in subclause (2) by inserting a new paragraph immediately after paragraph (c)—

“(c) provide specific guidelines on the participation of persons living with disability in accessible means of communication including braille, sign language or other appropriate means of communication”;

Justification

The amendment seeks to ensure that the Bill in its entirety does not lose sight of the need if inclusivity particularly to ensure that persons with disabilities are accorded an opportunity to participate in decisions and forums where matters of importance are being undertaken.

- (c) by deleting sub clause (5) and substituting thereof the following new sub clause—

- (5) "Where there is a conflict between the provisions of this Act and any other written law, the provisions of this Act shall prevail."

Justification

The amendment seeks to give seeks to give supremacy to this law on public participation once enacted as far as matters of public participation are concerned.

CLAUSE 12

THAT, clause 12 of the Bill be amended in subsection (4) by inserting the following paragraph immediately after paragraph (a)—

"(aa) disaggregated demographical data of the number of special groups, in particular persons living with disabilities who participated in the public participation forums"

"(ab) information on the processes and the achievements of the public participation including—

- (i) number of forums;
- (ii) activities that necessitated public participation;
- (iii) the budget;
- (iv) mode of public participation;
- (v) proof of notice; and
- (vi) comments received and how they were dealt with".

Justification

The proposed amendment seeks to ameliorate the provisions on reports developed by entities on conducted public participation. The Bill therefore places the onus on any public organ or office that conduct public participation to ensure that it desegregates demographic data specifying the particulars and number of persons with disabilities attended the forum. Further the entities are required to include additional information in their reports that include, the number of forums held, the budget, mode of public participation, among others.

CLAUSE 13

THAT, clause 13 of the Bill be amended by deleting the words "no fine" appearing after the words "liable to a fine".

Justification

The amendment seeks to correct a typographical error that exists in the Bill.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clauses immediately after clause 13—

Dispute resolution. 13A. The Attorney General shall, in consultation with institutions mandated to handle public complaints, promote alternative dispute resolution methods in the resolution of complaints relating to public participation.

Registrar of Public Participation. 13B. (1) There is established an office to be known as the Office of the Registrar of Public Participation (hereinafter referred to as the Office).

(2) The functions of the Office shall be to—

- (a) develop and coordinate the regulatory framework for public participation;

- (b) monitor compliance with established public participation standards;
- (c) provide expert advice to government agencies and civil societies on effective public participation practices; and
- (d) issue public reports on compliance issues highlighting identifies strengths and weaknesses in public participation processes.

Justification

The amendment seeks to make provisions for dispute resolution, as it may arise in the sector which clause in new and not provided for in the Bill. The bill also seeks to establish and set out the functions of the office of the Registrar of public participation, housed by the Attorney General.

GENERAL SCHEDULE

THAT, the schedule to the Bill be amended—

- (a) in paragraph 1 by inserting the following new subparagraph immediately after subparagraph (i)—
- (j) “reasonable accommodation that persons living with disability may require to participate meaningfully, including qualified sign language, interpreters, physically accessible infrastructure and documents provided in braille/large print”;
- (b) in paragraph 2(2) by inserting the words “that are adherent to KS 2952 – Accessibility - ICT Products and Services by the Kenya Bureau of Standards” immediately after the word “website” appearing in subparagraph (c);
- (c) in paragraph 2 by inserting the following new subparagraphs immediately after subparagraph (f)—

“(fa) notice boards;”

“(fb) social media;”

“(fc) markets;”

- (d) in paragraph 3(2) by inserting the following new words “and all various categories of vulnerabilities” immediately after the words “persons with disabilities”;
- (e) by deleting paragraph 4;
- (f) in paragraph 5(1) by inserting the following new words “as well as Kenyan sign language, Braille, electronic and other alternative and augmentative communication methods” immediately after the word “public” appearing in subparagraph (b); and
- (g) in paragraph 5 by inserting the following new subparagraph immediately after subparagraph (b)—

“(c) ensure that the documents distributed are easily accessible by persons with special needs”

Justification

The proposed amendment seeks to amend the Schedule to the Bill by providing for access and reasonable accommodation that persons living with disability may require to participate meaningfully, including qualified sign language, interpreters, physically accessible infrastructure and documents provided in braille/large print.

Further the Bill seeks to also provide for other avenues that may be utilised in publicising events of forums of public participation which may include notice board, social media, markets and churches in a bid to ensure that there is wide coverage of the notices on public participation to all citizens.

Committee Observations/Resolutions

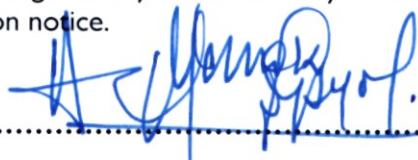
It was noted that the words "reasonable" and "affordable" are subjective with ambiguous meaning and should be well defined for clarity. It was therefore proposed that the definition of the term "access" and "reasonable accommodation" be redrafted for clarity.

MIN NO/DAA&GPC/PBL/2024/076: MATTERS ARISING

The Committee resolved to hold a meeting with the Technical Manager, Parliamentary Broadcasting Unit to deliberate on television and radio broadcasting rules as contained in the Standing Order to ensure that broadcasting of the House is effective.

MIN NO/DAA&GPC/PBL/2024/077: ADJOURNMENT

The meeting was adjourned at thirty minutes past one p.m. (13.30 pm). The next meeting will be held on notice.

Signed..........Date.....30/7/2024.....

Hon. Daniel Epuyo Nanok, CBS, M.P.
Chairperson

**MINUTES OF THE 19TH SITTING OF THE COMMITTEE ON PARLIAMENTARY
BROADCASTING AND LIBRARY HELD IN ROOM 22, 5TH FLOOR, BUNGE
TOWER, MAIN PARLIAMENT BUILDINGS ON THURSDAY, 13TH JUNE, 2024
AT 11.30 AM.**

PRESENT

1. The Hon. Daniel Epuyo Nanok, M.P. - **Chairperson**
2. The Hon. (Eng.) John Kiragu Chege, M.P.- **Vice Chairperson**
3. The Hon. John Waluke Koyi, M.P.
4. The Hon. Charles Onchoke Mamwacha, M.P.
5. The Hon. (Dr.) John Ariko Namoit, M.P.
6. The Hon. Josses Kiptoo Lelmengit, M.P.
7. The Hon. Suzanne Ndunge Kiamba, M.P.

APOLOGIES

1. The Hon. Mohamed Mohamed Ali, M.P.
2. The Hon. Raphael Sauti Wanjala, M.P
3. The Hon. James Gakuya Mwangi, M.P
4. The Hon. Moses Malulu Injendi, M.P.
5. The Hon. Timothy Wanyonyi Wetangula, M.P.
6. The Hon. Oscar Kipchumba Sudi, M.P.
7. The Hon. Rindikiri Mugambi Murwithania, M.P.
8. The Hon. Adams Kipsanai Korir, M.P.
9. The Hon. Anthony Kenga Mupe, M.P.
10. The Hon. Abdirahman Mohamed Abdi, M.P.
11. The Hon. George Gachagua, M.P.
12. The Hon. Kitilai Ole Ntutu, M.P.
13. The Hon. Phelix Odiwuor Khodhe, M.P.
14. The Hon. Talib Ahmed Abubakar, M.P.

SECRETARIAT

- | | |
|----------------------------|----------------------------|
| 1. Ms. Ella Kendi | Clerk Assistant I |
| 2. Ms. Fidlizah S. Mwagogo | Clerk Assistant III |
| 3. Ms. Marlene Ayiro | Principal Legal Counsel II |
| 4. Mr. Silas Korir Lomutur | Research Officer III |
| 5. Ms. Jacinta Maru | Serjeant At Arms |
| 6. Mr. Derrick Cheboi | Audio Officer Intern |

AGENDA

1. Preliminaries
 - i) Prayers
 - ii) Adoption of the Agenda
2. Confirmation of the Minutes
3. Matters Arising
4. **Consideration of the proposed amendments to the Public Participation Bill, 2023.**
5. Any other Business
6. Adjournment and date of the next meeting

MIN NO/DAA&GPC/PBL/2024/070: PRELIMINARIES

The meeting was called to order at thirty minutes past eleven o'clock (10.30 a.m.), followed by a word of prayer. The agenda of the meeting was adopted having been proposed by Hon. (Dr.) John Ariko Namoit, M.P and seconded by Hon. Suzanne Ndunge Kiamba, M.P.

MIN NO/DAA&GPC/PBL/2024/071: CONSIDERATION OF THE PROPOSED AMENDMENTS TO THE PUBLIC PARTICIPATION BILL, 2023

The Legal Counsel took the Committee through the Committee's proposed amendments and the justifications as follows;

LONG TITLE

1. **THAT**, the long title of the Bill be deleted and substituted by the following new long title—

"AN ACT of Parliament to provide for a general framework for effective public participation; to give effect to the constitutional principles of democracy and participation of the people under Articles 1, 10(2), 35(3), 37, 69(1)(d), 94(2), 95(2), 118, 174(c), 184(1)(c), 196, 201(a), 221(5), 232 of the Constitution; and for connected purposes"

Justification

The Bill, seeks to provide for public participation and the draft long title of the Bill has hived off and provided for specific Articles from the constitution that deal with public participation, to the exclusion of others. The amendment therefore seeks to ensure that all constitutional provisions that speak on public participation are included in the long title of the Bill.

CLAUSE 2

2. **THAT**, clause 2 of the Bill be amended by—
 - (a) deleting the definition of "Cabinet Secretary" and substituting thereof the following new definition—

"Cabinet Secretary" means the Attorney General;

Justification:

The Bill in the definition of Cabinet Secretary makes reference to the cabinet secretary for the time being responsible for Justice and includes the Attorney General, yet the office that is in existence is that of the Attorney General, which office is seized with matters of public participation and has since coordinated the formulation of a Policy on Public participation. The amendment therefore seeks to clarify the meaning of Cabinet Secretary as far as this Act is concerned.

(b) deleting the definition of “public participation” and substituting thereof the following new definition—

“public participation” means the process by which citizens, as individuals, groups or communities take part in the conduct of public affairs, interact with the state and other non-state actors to influence decision policies, programs, legislation and provide oversight in service delivery development and other matters concerning their governance and public interest either directly or indirectly through freely chosen representatives; and

Justification

The definition of public participation as provided for in the Bill is not comprehensive and therefore there is a need to come up with an elaborate definition of the term public participation.

(c) inserting the following new definitions in their proper alphabetical order—

“access” includes access to information and services in an affordable manner, fittings, amenities, built environments and infrastructure”

“access to information “includes ensuring the provision of braille, sign language, large texts, websites and local languages”

“meaningful participation” means a process that deliberately aims at engaging members of the public in a purposeful and real process that seeks their input to inform a public decision.

Justification

The Committee and the stakeholders were of the view that the terms “access”, “access to information” and “meaningful participation” had been used repeatedly in the Bill, and there was therefore a need to define them and to provide clarity for the user of this Bill.

CLAUSE 4

3. **THAT**, clause 4 of the Bill be amended by deleting paragraph (a) and substituting thereof the following new paragraph—

“(a) give effect to the principles of public participation as provided for in Articles I, 10(2), 35(3), 37, 69(1)(d), 94(2), 95(2), 118, 174(c), 184 (1)(c), 196, 201(a), 221(5), 232 of the Constitution; and

Justification

The amendment has been occasioned by the fact that there is a need to expand the object and purpose of the Bill as had been set out in clause 4, paragraph (a). The Bill, seeks to provide for public participation and the the bill as drafted in the objects of the Act has provided for specific Articles from the constitution that deal with public participation, to the exclusion of others. The amendment therefore seeks to ensure that all constitutional provisions that touch on public participation are included in the objects of the Bill.

CLAUSE 6

4. **THAT**, clause 6 of the Bill be amended in subclause (2) by —

(a) inserting the word “office” immediately after the words “state organ or public”; and

Justification

The amendment seeks to provide clarity and correction of an error, the term “office” had been omitted erroneously from the clause.

(b) inserting the words “including the recognition of the need for reasonable accommodation” immediately after the words “effective representation” appearing in paragraph (d).

Justification

The amendment seeks to ensure that the Bill in its entirety does not lose sight of the need if inclusivity particularly to ensure that persons with disabilities are accorded an opportunity to participate in decisions and forums where matters of importance are being undertaken.

CLAUSE 7

5. **THAT**, clause 7 of the Bill be amended in sub clause (2) by deleting the words “either orally” appearing in paragraph (b) immediately after the word “presentations” and substituting thereof the words “orally, by sign language”.

Justification

The amendment seeks to ensure that the Bill in its entirety does not lose sight of the need if inclusivity particularly to ensure that persons with disabilities are accorded an opportunity to participate in decisions and forums where matters of importance are being undertaken.

CLAUSE 9

6. **THAT**, clause 9 of the Bill be amended in—

(a) in subclause (1) by inserting the words “operational or administrative” immediately after the words “shall develop”;

Justification

The bill seeks to qualify that the guidelines that are to be formulated by responsible authorities are to be operational and administrative guidelines.

(b) in subclause (2) by inserting a new paragraph immediately after paragraph (c)—

“(c) provide specific guidelines on the participation of persons living with disability in accessible means of communication including braille, sign language or other appropriate means of communication”;

Justification

The amendment seeks to ensure that the Bill in its entirety does not lose sight of the need for inclusivity particularly to ensure that persons with disabilities are accorded an opportunity to participate in decisions and forums where matters of importance are being undertaken.

(c) by deleting subclause (5) and substituting thereof the following new subclause—

(5) “Where there is a conflict between the provisions of this Act and any other written law, the provisions of this Act shall prevail.”

Justification

The amendment seeks to give supremacy to this law on public participation once enacted as far as matters of public participation are concerned.

CLAUSE 12

7. **THAT**, clause 12 of the Bill be amended in subsection (4) by inserting the following paragraph immediately after paragraph (a)—

“(aa) disaggregated demographical data of the number of special groups, in particular persons living with disabilities who participated in the public participation forums”

“(ab) information on the processes and the achievements of the public participation including—

- (i) number of forums;
- (ii) activities that necessitated public participation;
- (iii) the budget;
- (iv) mode of public participation;
- (v) proof of notice; and
- (vi) comments received and how they were dealt with”.

Justification

The proposed amendment seeks to ameliorate the provisions on reports developed by entities on conducted public participation. The Bill therefore places the onus on any public organ or office that conduct public participation to ensure that it desegregates demographic data specifying the particulars and number of persons with disabilities attended the forum. Further the entities are required to include additional information in their reports that include, the number of forums held, the budget, mode of public participation, among others.

CLAUSE 13

8. **THAT**, clause 13 of the Bill be amended by deleting the words “no fine” appearing after the words “liable to a fine”.

Justification

The amendment seeks to correct a typographical error that exists in the Bill.

NEW CLAUSE

9. **THAT**, the Bill be amended by inserting the following new clauses immediately after clause 13—

Dispute resolution. **13A.** The Attorney General shall, in consultation with institutions mandated to handle public complaints, promote alternative dispute resolution methods in the resolution of complaints relating to public participation.

Registrar of Public Participation. **13B.** (1) There is established an office to be known as the Office of the Registrar of Public Participation (hereinafter referred to as the Office).

(2) The functions of the Office shall be to—

- (a) develop and coordinate the regulatory framework for public participation;
- (b) monitor compliance with established public participation standards;
- (c) provide expert advice to government agencies and civil societies on effective public participation practices; and
- (d) issue public reports on compliance issues highlighting identifies strengths and weaknesses in public participation processes.

Justification

The amendment seeks to make provisions for dispute resolution, as it may arise in the sector which clause in new and not provided for in the Bill. The bill also seeks to establish and set out the functions of the office of the Registrar of public participation, housed by the Attorney General.

GENERAL SCHEDULE

10. **THAT**, the schedule to the Bill be amended—

- (a) in paragraph 1 by inserting the following new subparagraph immediately after subparagraph (i)—

(j) “reasonable accommodation that persons living with disability may require to participate meaningfully, including qualified sign language, interpreters, physically accessible infrastructure and documents provided in braille/large print”;

(b) in paragraph 2(2) by inserting the words “that are adherent to KS 2952 – Accessibility - ICT Products and Services by the Kenya Bureau of Standards” immediately after the word “website” appearing in subparagraph (c);

(c) in paragraph 2 by inserting the following new subparagraphs immediately after subparagraph (f)—

“(fa) notice boards;”

“(fb) social media;”

“(fc) markets;”

(d) in paragraph 3(2) by inserting the following new words “and all various categories of vulnerabilities” immediately after the words “persons with disabilities”;

(e) by deleting paragraph 4;

(f) in paragraph 5(1) by inserting the following new words “as well as Kenyan sign language, Braille, electronic and other alternative and augmentative communication methods” immediately after the word “public” appearing in subparagraph (b); and

(g) in paragraph 5 by inserting the following new subparagraph immediately after subparagraph (b)—

“(c) ensure that the documents distributed are easily accessible by persons with special needs”

Justification

The proposed amendment seeks to amend the Schedule to the Bill by providing for access and reasonable accommodation that persons living with disability may require to participate meaningfully, including qualified sign language, interpreters, physically accessible infrastructure and documents provided in braille/large print.

Further the Bill seeks to also provide for other avenues that may be utilised in publicising events of forums of public participation which may include notice board, social media, markets and churches in a bid to ensure that there is wide coverage of the notices on public participation to all citizens.

MIN NO/DAA&GPC/PBL/2024/072: ADJOURNMENT

The meeting was adjourned at five minutes past one o'clock (1.05pm). The next meeting to be held on notice.

Signed.....Date.....

**Hon. Daniel Epuyo Nanok, CBS, M.P.
Chairperson**

MINUTES OF THE 17TH SITTING OF THE COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY HELD IN BARAZA CONFERENCE ROOM 2, AT SAROVA WHITESANDS, MOMBASA COUNTY ON SATURDAY 27TH APRIL, 2024 AT 2.30PM

PRESENT

1. The Hon. Daniel Epuyo Nanok, M.P. - **Chairperson**
2. The Hon. (Eng.) John Kiragu Chege, M.P.- **Vice Chairperson**
3. The Hon. Timothy Wanyonyi Wetangula, M.P.
4. The Hon. Talib Ahmed Abubakar, M.P.
5. The Hon. Rindikiri Mugambi Murwithania, M.P.
6. The Hon. Anthony Kenga Mupe, M.P.
7. The Hon. Charles Onchoke Mamwacha, M.P.
8. The Hon. (Dr.) John Ariko Namoit, M.P.
9. The Hon. George Gachagua, M.P.

APOLOGIES

1. The Hon. Moses Malulu Injendi, M.P.
2. The Hon. Mohamed Mohamed Ali, M.P.
3. The Hon. Adams Kipsanai Korir, M.P.
4. The Hon. Raphael Sauti Wanjala, M.P.
5. The Hon. James Gakuya Mwangi, M.P.
6. The Hon. Oscar Kipchumba Sudi, M.P.
7. The Hon. Abdurahman Mohamed Abdi, M.P.
8. The Hon. Josses Kiptoo Lelmengit, M.P.
9. The Hon. Phelix Odiwuor Khodhe, M.P.
10. The Hon. Suzanne Ndunge Kiamba, M.P.
11. The Hon. John Waluke Koyi, M.P.
12. The Hon. Kitilai Ole Ntutu, M.P.

SECRETARIAT

- | | |
|----------------------------|-------------------------------|
| 1. Ms. Ella Kendi | Clerk Assistant I |
| 2. Ms. Marlene Ayiro | Senior Legal Counsel |
| 3. Mr. Silas Korir Lomutur | Research Officer III |
| 4. Mr. Jared Onyancha | Public Communications Officer |
| 5. Ms. Jacinta Maru | Serjeant-At-Arms |
| 6. Mr. Derrick Cheboi | Audio Officer Intern |

AGENDA

1. Preliminaries
 - i) Prayers
 - ii) Adoption of the Agenda
2. Confirmation of the Minutes of the previous sitting
3. Matters Arising

4. **Consideration of Part Four of the draft report on Public Participation Bill, 2023**
5. Any other Business
6. Adjournment and date of the next meeting

MIN.NO/DAA&GPC/PBL/2024/062: PRELIMINARIES

The meeting was called to order at thirty minutes past two o'clock (2.30pm), followed by a word of prayer.

MIN.NO/DAA&GPC/PBL/2024/063: CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETINGS

The agenda was deferred

MIN. NO/DAA&GPC/PBL/2024/064: CONSIDERATION PART FOUR OF THE DRAFT REPORT ON PUBLIC PARTICIPATION BILL, 2023

The Legal Counsel took the Committee through the submissions received by various stakeholders clause by clause as follows;

CIVIL SOCIETY PARLIAMENTARY ENGAGEMENT NETWORK(CSPEN)

Clause 2 Interpretation

1. The Network submitted that to the definition of the term Cabinet Secretary amended to be restricted to the Attorney General. In justification, definition will decrease ambiguity as there is no minister for justice as well as mitigate potential conflicts of interest.

Committee's Observation/Recommendation

The proposal was agreed to as it provides clarity on who the responsible office/ authority is.

2. The stakeholder proposed that the Bill be amended by providing for the definition of the term "**Civic Education**" as follows : "*the process of effectively imparting information and creating awareness of decision-making processes, legislations, public policy, rights of the public and responsibilities of state organs and public offices including how these rights and responsibilities are exercised and accessed by the public and includes classroom-based learning, informal training, experiential learning, and mass media campaigns.*" The Network noted that effective public participation in decision making within democratic society, aligning with Article 35 of the Constitution which supports access to information. As such involves integrating civic education in the national budget, ensuring allocated funds are properly utilised with specific measures in place.

Committee's Observation/Recommendation

The proposal was not persuaded to have the introduction of civic education aspect in the public participation would broaden the scope of the public participation process.

3. The stakeholder also suggested that that the definition of public participation as provided in the Bill was not sufficient and that the same ought to be amended as follows “**Public participation**’ means the process where individuals and governmental and non-governmental groups are engaged and influence decision-making in policy, legislation, service delivery, oversight, audit, and development matters. They noted that the definitions borrow heavily from the definition adopted in the County Public Participation Guidelines by the ministry of Devolution and Arid and Semi- Arid Lands which broaden the actors and scope of public participation. Alternatively, this definition introduces the public participation in the audit process aligning it to ongoing practices at the OAG and its specific department on social audits/social accountability.

Committee’s observation/Recommendation

The Committee was of the view that the definition of the term “public participation” as provided in the Bill was sufficient.

Clause 4 Object of the Act

4. Additionally, the CSPEN submitted that Article 174 (c) and Article 184 (1)(c) of the Constitution be amended to include among the Articles that the Act intends to give effect to under sub-clause 4(a). They noted that these Articles highlight public participation as an object of devolution and as a key principle in the governance of urban areas and cities.

Committee’s observation/Recommendation

The proposal was agreed to, to add all constitutional provision that speak on the subject of public participation should be included in the long title of the Bill.

Clause 5—Scope of public participation

5. CSPEN further suggested insertion of a new scope of participation—Vetting of select State officers. In justification, they noted that while these processes are guided by both the Public Appointments (Parliamentary Approval) Act and the Public Appointments (County Assemblies Approval) Acts, it is crucial to emphasize that they still fall within the ambit of public participation processes

Committee’s Observation/Recommendation

The Committee observed that the proposed proposal was an overkill owing to the fact that the cited process is carried out in open and the public is allowed to attend. We cannot be able to legislate for everything in a statute hence the need for subsidiary legislation.

Clause 6— conduct of public participation

6. CSPEN Proposed that the Bill be amended by inserting a new sub-clause (3) to provide for components of meaningful public participation to include—
 - i) clarity of the subject matter for the public to understand;

- ii) structures and processes (medium of engagement) of participation that are clear and simple;
- iii) opportunity for balanced influence from the public in general;
- iv) commitment to the process;
- v) capacity to engage on the part of the public,
 - a. including that the public must first be sensitised on the subject matter.
- vi) Feedback on the input given, eventual outcome and how input influenced the outcome of public participation

Committee Observation/ Recommendation

The proposal was not taken into consideration by the Committee as it would be difficult to implement the issues proposed since follow up cannot be achieved.

Clause 7 (2)

Rights of a Member of the public in public participation

7. The CSPEN further suggested that the Bill be amended by inserting the following new additional rights under sub-clause (2) of the Bill:
 - a) Making presentations without influence or interruptions by a State or public officer.
 - b) Members of the public should also not face any sanctions for attending and making submissions during public participation forums.
 - c) The public should also be accorded adequate and reasonable time to make presentations.
8. They justified their view by stating that they noted that this seeks to reduce cases where citizens feel that they are intimidated within public participation proceedings.
9. Additionally, the CSPEN further noted that the insertion of the obligations of state organs and/or public officers in conducting public participation such as establishment of proper structures for meaningful public participation and the establishment of a monitoring and evaluation framework. It further submitted that parallel to the existence of rights, there should be corresponding obligations that necessitate codification. They noted that the input by public or state officers should be limited to giving instructions and/or making clarifications on issues raised on the matter under consideration. This is to avoid intimidation of members of the public on the submissions made.

Committee observation/ Recommendation

The Bill had adequately taken care of this provision.

10. Further, there was a proposal to effect an amendment to sub-clause 2 (b) of the Bill to make provision for members of the public to make submissions through Kenyan Sign Language administered by qualified sign language professionals. As that ensures inclusion of all members of the public.

Committee observation/ Recommendation

The proposal was adopted for inclusivity of persons with disabilities

Clause 8 Determination of responsible authority.

11. They further suggested that Clause (8) of the Bill be amended by to highlight that the stated responsible authorities hold the power to delegate the performance of the duties within the Act to an officer with that specific scope. That ensures that citizens have a point of contact within the state organ or public office that they can follow up with and hold to account on matters concerning public participation.

Committee observation/ Recommendation

The proposal was disagreed with since the Attorney General is the responsible authority.

Clause 12-Reports

12. CSPEN made a proposal to the effect that sub-clause (4) should be amended to include:

- i) a summary of the number and nature of public participation sessions held,
- ii) the immediate output and outcomes from public involvement, and
- iii) an update on the future steps or progress of the matters under consideration.

They noted that the annual report should outline all the information collected during all public participation sessions.

13. Further, CSPEN noted that a sub-clause should be introduced to note that the annual reports should be made public for access to the public through the official websites of the Parliament, relevant institutions, and any other relevant channel of communication. They justified that the annual reports on public participation should be made public for access to the public at the end of each fiscal year in line with Article 35 of the Constitution.

Committee Observation/Recommendation

The proposal was agreed to but to the extent that it provided that the report to include the summary on the number of sessions held, output and outcome of the process for all matters under consideration.

Clause 13 Penalty

14. CSPEN further suggested that the provision to provide for specific offences and penalties be amended. They noted that the Bill should clearly define punishable conduct which will then

be followed by the penalty. In this way, both citizens and public/state officers can foresee when a specific Act would be a violation and adjust their conduct accordingly.

Committee observation/ Recommendation

The suggested fines by the stakeholder were deemed to be very punitive.

Schedule—General public participation guidelines.

Factors to be considered.

15. CESPEN suggested that the Bill be amended by providing for a new clause on guiding principles to be inserted—

“Reasonable accommodations that persons with disabilities may require to participate meaningfully, including qualified sign language interpreters, physically accessible infrastructures and documents provided in braille/large print.” As that ensures persons with disabilities enjoy or exercise on an equal basis with others all human rights and fundamental freedoms in line with the Convention on the Rights of Persons with Disabilities.

Committee’s Observation/Recommendation

The proposal was adopted for purposes of promoting and enhancing inclusivity of persons with disabilities.

Paragraph 2 Notice Section 2 (1).

16. Additionally, CSEPEN submitted that the Bill be amended as follows;

“A state organ or public office shall give the public 21 days’ notice to make input on the issue”. They noted that 21 days will provide interested parties sufficient time to analyse and prepare submissions for hearing

Committee Observation/Recommendation

The proposal was disagreed with as specifying the time frame would be restrictive

17. Additionally, they submitted that insertion of social media platforms under (2) (a) as a place for publication and distribution of notices. On their end, they noted that as of January 2022, there were 11.75 million social media users in Kenya. Many Kenyans use these platforms avidly and receive information from the same. There has been a growing trend of government agencies leveraging these platforms to share vital information to citizens.

Committee observation/Recommendation

The proposal was agreed to provide for wide coverage and reach to the citizens and in a medium that would be well received and understood.

Adequate time.

18. CSEPEN in their submission to the Committee sought to effect an amendment on guideline 4 of the Bill by specifying a timeline of **21 days**. They noted that twenty-one days was aimed at

providing interested parties with sufficient time to analyse and prepare submissions for hearing

Committee observation/Recommendation

The proposal was seen to be untenable by the Committee.

Access to information for public participation

19. They averred that to of guideline 5 (1) (a) be amended to read as;

Publish and distribute the documents for consideration as widely as possible using the available means, including providing hard copies, radio and television advertisements, websites, or community radio announcements **at least 14 days (about 2 weeks) before the deadline for submission of feedback.** This is on the basis of specifying the time makes the process predictable and timelines certain.

Committee observation/Recommendation

The aspect of providing a timeline in the law was deemed to be impractical.

Clause 5

20. Further, CSPEN submitted that clause 5(3)(c) of the Bill be amended as follows: "This may be subject to **information disclosure limitations under the access to Information Act.** As such ensure that many limitations imposed by a state organ or public office subject to the access of Information Act."

21. Additionally, they submitted that guideline 5 of 4(b) be amended to read; The applicant fails to satisfy any **access to information requirements** as that ensures a failure by a state organ or public office to give information pursuant to Article 35 of the Constitution as well as the Access to Information Act. Imposing a confidentiality requirement is subjective and may be in contravention of the access to Information Act.

Processing of responses.

22. The CSPEN suggested that the insertion of the following clause— (d) transfer of applications to another public entity, if the information requested is held by that other public entity. They noted that this is in line with the provisions of section 10 of the Access to Information Act and enables ease of access to information by applicants.

Committee observation/Recommendation

The proposal was disagreed as matters concerning access to information were well provided for in the access to information Act.

General recommendations

23. In conclusion CSPEN in their proposals suggested the alignment of existing public participation legislation. They submitted that the regulations should provide adequate mechanisms to align the existing laws and policies to the overarching framework provided by the bill. They noted that a number of public bodies have developed their own legislations and policies on public participation including several counties.

CENTRE FOR INTELLECTUAL PROPERTY AND INFORMATION TECHNOLOGY LAW

Clause 2 Interpretation

24. The Center for Intellectual Property and Information Technology Law made its submissions to the committee on the Bill. The centre averred that that the Bill should be amended to insert a new term in the interpretation part of the Bill as follows— **“public awareness”**. As such, enhance meaningful and inclusive public participation processes.

Committee’s Observations/Recommendations

The new definition was not necessary and therefore the proposal was not adopted

Clause 5

25. The CIPIT further proposed that the Bill be amended by inserting a new paragraph to clause 5 on the scope of public participation as follows- e *“the implementation of functions that are far reaching on the public communities and organisations.”* They noted that public participation should be made a prerequisite in the introduction and enforcement of government functions that have far-reaching consequences on the public, communities and organisations.

Committee’s Observations/Recommendations

The scope as provided for in the Bill was taking care of the concerns raised by this stakeholder.

Clause 6

26. The CIPIT also in their submissions averred that the section of the Bill that provides for factors to consider in determining “meaningful opportunities for public participation”. should be regulated with precision what constitutes meaningful public participation.

Committee’s Observations/Recommendations

there was indeed a need to define or unpack the term meaningful public participation so that nothing is left to chance.

Schedule—General public participation guidelines.

Paragraph 2 Notice.

27. The stakeholders were of the opinion that the provision of a definite time for the notice to be given: *and they suggested that the definite perio should be 14 days’ notice.* As that specifies the time makes the process predictable and timelines certain.

Committee’s Observations/Recommendations

The committee observed that the nature of public participation may vary from one subject to another which would then make it difficult to come up with one definite period, entities should be left to regulate their timeframes in a reasonable manner.

Schedule

General public participation guidelines—Adequate time.

28. The CIPIT further submitted that:” A state organ or public office shall give the public **14 days’ notice** to make input on the issue.”

Committee’s Observations/Recommendations

The Committee observed that the nature of public participation may vary from one subject to another which would then make it difficult to come up with one definite period, entities should be left to regulate their timeframes in a reasonable manner.

KENYA DEVOLUTION CIVIL SOCIETY ORGANIZATION WORKING GROUP (KDCSWG)

Title

29. The Devolution Civil Society Organization Working in their submissions on the Bill to the Committee proposed that the short title of the Bill should be amended to read as; “***The Civic Education and Public Participation Bill 2023***”.
30. In justification the KDCSWG noted that civic education and public participation are closely linked and intertwined, hence, it is not possible to have meaningful public participation without civic education. Alternatively, the Group suggested for inclusion of specific clauses on civic education in the Bill in the event that it is not possible to change the short title of the Bill in its current form to consider and cover civic education.

Committee’s Observations/Recommendations

The Committee did not adopt the proposal because introduction of civic education was bound to broaden the scope and shift the intention of public participation. Since it is not provided for in the constitution, members observed that there was therefore no need to include it in the title.

Clause 1- Long title

31. The KDCSWG noted that the long title of the Bill ought to be amended to include Article 174(c) and (d) of the Constitution of Kenya, noting that the Bill is meant to regulate public participation at both levels of government.

Committee’s Observations/Recommendations

The Members agreed to the proposal.

Clause 2 Interpretation

32. Additionally, the KDCSWG submitted that the bill be amended in the interpretation section by amending the term phrase “Cabinet Secretary” as follows: “***Cabinet Secretary***” means the Cabinet Secretary responsible for Public Service. According to them, public participation is one of the national values of governance, and the Public Service Commission is responsible for implementation of these values.

Committee’s Observations/Recommendations

The Committee was of the view that the AG had been designated in the Public Participation Policy as the s in charge and lead agency in the implementation of the process.

33. They further averred that the definition of public participation should be amended to include “**planning, budgeting, monitoring, evaluation and auditing**” as part of the decision-making processes for citizen engagement. Accordingly, they submitted that the law should explicitly state that all citizens will be included in all levels of governance for full realization of the provisions of Article 1 and Article 10 of the constitution.

Committee’s Observations/Recommendations

Members rejected the proposal owing to the fact that involvement of the public in all those processes was going to attract huge budget constraints with the resultant effect of affecting the implementation of public participation.

Clause 4 Object of the Act

34. The KDCSWG in their submission proposed that **civic education** should be included as an objective for enabling or promotion of public participation. They noted that Civic education is an important ingredient for public participation.
35. Further the Group suggested the insertion of a new provision on guiding principles—
- a) That public participation shall be two- way process- with feedbacks to citizen given on decisions made actions taken and results achieved by the county government;
 - b) That public participation shall be a continuous process and not a none time event;
 - c) That the public, communities and organizations that shall be affected by a decision shall have a right to be consulted and involved in the decision-making process;
 - d) Provisions of timely and relevant information, accessible to all members of the public so that they are aware and can engage in decisions that affect them;
 - e) Adherence to the principles under Article 10 and Chapter Six of the Constitution;
 - f) Adherence to the principles of public participation prescribed by Section 87 of the County Government Act and any written law; and
 - g) Promotion of sustainable decisions recognizing needs and interest of all participants including decision makers.

Committee’s Observations/Recommendations

Members disagreed that civic education is not provided as part of public participation in the Constitution of Kenya 2010 and that was widening the scope of Public Participation.

Clause 5 Scope of the public participation

36. The KDCSWG further averred that the Bill should be amended further in clause five at paragraph (a), (b) and (c) as follows—
- a) Formulation and implementation of policies;
 - b) Planning budgeting and financial management

c) Making and implementation of laws.

37. The KDCSWG further proposed that clause 5(d) be renamed to 5(e) in the Bill, noting that the changes in this scope of public participation is to integrate the citizen participation in all the processes of public governance in line with Article I of the Kenyan Constitution.

Committee's Observations/Recommendations

Members disagreed that involvement of the public in budgeting is not cost effective and it is a tedious process.

Clause 6(2)(e) conduct of public participation

38. The KDCSWG further suggested to include a section on — (f) interest and relevance of stakeholders. They noted that having two tiers of consultations enables initial consultation with stakeholders before the general public.

Committee's Observations/Recommendations

Members disagreed with the proposal because the sub-clause 6 (2) (d) has covered all the key stakeholders.

Clause 7 (2)

Rights of a Member of the public in public participation

39. The KDCSWG proposed that the Bill be amended by providing for an insertion of a new clause in 7(2) as follows—

"A member of the public to be affected by the decision can be consulted/appear virtually

Provision of adequate time to make submissions and presentations

The public or entities should make presentations without state or public office interference and without any sanctions from the state or public office or political interference. "They noted that this ensures the right to freedom of expression as enshrined in the bill of rights stipulated in the Constitution as well as to include Kenyans living abroad in public participation.

Committee's Observations/Recommendations

Members agreed that virtual means of communication are necessary.

Clause 8

Determination of responsible authority.

40. The KDCSWG further suggested the authority of County Assemblies in clause 8(2) should be added. This is because County Assemblies are also responsible authorities to the devolved governments
41. They further sought an amendment to substitute Cabinet Secretaries with Permanent Secretaries in clause 8(5). This is because the accounting officers are Permanent Secretaries, not Cabinet Secretaries.

42. On their end they submitted that the government department responsible for implementing the law should be the Public Service Commission instead of the Ministry of Justice. They asserted that the Attorney General is the custodian of the law, noting that the implementation of the Bill should be charged to an independent body to coordinate public participation and Civic Education and ensure compliance.

Committee's Observations/Recommendations

The function of implementation of the Policy had been given to the Attorney General.

43. The KDCSWG suggested that the section (2) sub-section (3) (d) of the Bill be amended to provide that a virtual option be included. As that caters for those not present and those in the diaspora.

Committee's Observations/Recommendations

The proposal made sense in this time and age, the challenge would be the implementation part, due to insufficient resources however the same could be done progressively.

General public participation guidelines.

Access to information for public participation

44. The KDCSWG Group suggested that there should be no charge for public information. They noted that if a charge is included it will limit the right to access to information.

Committee's Observations/Recommendations

The Committee noted that the Access to Information Act provides for the procedure of obtaining any information and the public is required to pay a small fee of facilitation of the information, otherwise it may be very costly for government to run.

Access to information for public participation

45. The KDCSWG suggested that there should be no confidentiality for public information unless it's security information which is protected by law. As that clause may be used by state organs and public offices to deny information hence violation of the right to public information.

Committee's Observations/Recommendations

There are instances when the issue of confidentiality may arise, therefore a blanket refusal of the same should not be entertained, but the case should remain as it is and be implemented on a case by case basis.

46. The KDCSWG further proposed that paragraph 5(4) (a) of the Bill be deleted. They observed that unreasonable circumstances are not defined by any law and are subject to wrong interpretation and hence might be used to violate the right to information.

Committee's Observations/Recommendations

The committee agreed with the proposal as the unreasonable circumstances had not been defined.

47. The KDCSWG asserted that Confidentiality requirements in paragraph 5(4)(b) be removed. They noted that confidentiality requirements will limit the right to information and hence they should be done away with.

Committee's Observations/Recommendations

There are instances when the issue of confidentiality may arise, therefore a blanket refusal of the same should not be entertained, but the case should remain as it is and be implemented on a case-by-case basis

48. The KDCSWG proposed that Clause (5) sub-clause (5) of the Bill to be amended to delete the words "nature and extent". They noted that this is ambiguous and not specified in any law or regulations and might be used to deny public information.

Conduct in public participation processes.

49. The KDCSWG suggested that in paragraph 8(3) the terms "nature and extent" be deleted. They noted that the nature and extent is not defined anywhere hence it is ambiguous and a hindrance to the right to freedom of expression.

NEW CLAUSE ON DISPUTE RESOLUTION

50. The KDCSWG asserted that the bill does not have a redress mechanism and recommended a whole section to be included. They noted that this will reduce petitions or litigation which occurs after the public participation process is undertaken.

Committee's Observations/Recommendations

This proposal was agreed and there was a need to come up with a dispute resolution mechanism in the law.

General recommendations

51. The KDCSWG suggested that—the Bill is very weak on feedback and recommended a whole section to be included. They noted that this will ensure validation, review, monitoring and evaluation of the process of public participation. They further noted that a whole part of the bill includes civic education and budget allocation. They suggested that this will make the people participate meaningfully in the public participation process.
52. They suggested the bill still lacks the following key issues:
- a) lack of minimum standards as to what comprises adequate, effective and meaningful participation especially at the community level;
 - b) Inadequate framework for ensuring the effective participation and involvement of the marginalized, vulnerable and minority groups in county governance and development;
 - c) Inadequate safeguards of public interest in public participation processes; and
 - d) Inadequate complaint handling, reporting & feedback mechanisms.

Committee's Observations/Recommendations

The Bill had provided for feedback mechanisms and the Access to Information Act, does not preclude anyone from seeking for information from any public entity on a respective matter.

KENYA LAW REFORM COMMISSION

Clause 2 Interpretation

53. The KLRC suggested that the definition of Cabinet Secretary be amended to "Cabinet Secretary". The definition stated that it "includes" the Attorney General. They noted that this may pose a challenge in identifying the particular state officer to be designated as the Cabinet Secretary. As such, challenges may affect accountability on any responsibility vested in the Cabinet Secretary.

Committee's Observations/Recommendations

The Committee was of the view that the Definition of the term Cabinet Secretary should be re- defined to avoid any ambiguity and misinterpretation.

Clause 5

54. KLRC submitted that clause 5 of the Bill ought to be amended to incorporate the full cycle of government action. For instance, the Scope to include—
- (a) implementation on policies;
 - (b) review or reform of legislation;
 - (c) development and implementation on government programmes and projects; and
 - (d) implementation of government projects.
55. On their end they further submitted that the scope of public participation under clause 5 is limiting. They noted that the jurisprudence around public participation has grown and it is important to crystallise it and define it. An open-ended cheque may see the public participation value and principle being abused both ways.

Committee's Observation/Recommendation

The members disagreed with the proposal as the scope as provided for in the Bill was sufficient

Clause 6 (2)

56. KLRC proposed an amendment to Clause 6(2) of the Bill be by inserting the word "office" immediately after the word "public". This is for grammatical sense.

Committee's Observations/Recommendations

The members agreed that this proposal will cure a grammatical error in the Bill.

Clause 6 (2) (a), (b) and (c)

57. The KLRC further submitted that there was a need to amend the Bill by deleting word "decision" provided in clause 6 (2). As that, consider using a more specific term that aligns

with the scope of public participation. They submitted that the word decision is too broad and vague, noting that State organs and public offices make decisions every day.

Committee's Observations/Recommendations

The members agreed to insert a term that will encompass the word decision.

Clause 7 (1)

58. The KLRC submitted that clause 7 of the Bill be amended to read as follows:

"Where a member of the public or an entity elects to attend a public participation exercise, the member of public or entity has the right to—

- (a) make presentations either orally or by way of written submissions to a state organ or public office on the subject matter as may be determined*

On their end they submitted that the right to participate is not absolute or mandatory and should not be concluded in mandatory terms.

59. Further, KLRC submitted that where a right is crafted in mandatory terms the state bears a burden that may be costly in the long run. As such, tie the election to participation with conditions that must be fulfilled by the person or entity that chooses to participate in order for this right to crystallize.

Committee's Observations/Recommendations

The members agreed with the proposals the right to participate should not be mandatory

Clause 8

Determination of responsible authority.

60. The KLRC suggested that clause 8 (1) be deleted indicating that is irrelevant. They noted that the words "Cabinet Secretaries" in clause 8(5) be deleted and replaced with the words "a Cabinet Secretary". As such drafting is done in singular.

Committee's Observation/Recommendation

Members agreed to correct typographical errors.

Clause 9 (5)

Development of specific public participation guidelines

61. KLRC submitted that subsection 5 of the Bill be expounded or deleted. They noted that it is not clear what aspect of the Statutory Instruments Act shall apply to the guidelines. Is it the process (formulation, consultation, participation, scrutiny, exemption, approval etc, categorization or substance?

Committee's Observation/Recommendation

Members disagreed with the proposal, they observed that the Statutory Instruments Act shall apply to the guidelines and Regulations.

Clause 12-Reports

62. KLRC submitted that the clause 12 be amended to include information on:

- a) a brief on the activity that necessitated the public participation (scope);
- b) the budget;
- c) list of persons or entities likely affected;
- d) mode/methodology of public participation;
- e) proof of notice;
- f) comments received and how they were dealt with

63. On their end they submitted that this sub-clause is limiting and needs to be expanded to provide proof of public participation. They noted that public participation should not be a tick in the box event.

Committee's Observations/Recommendations

Members disagreed with the proposal because it is too detailed hence difficult to Implement.

Clause 14 (1)

64. KLRC further submitted that sub-clause 14(1) be amended by deleting the word "regulation" and substituting therefore with "*a statutory instrument*". The regulations are just a type of statutory instrument. The clause should include the general term "statutory instruments"

Committee's Observations/Recommendations

Members disagree with the proposal as the meaning of regulations was not a matter that would require strict interpretation in Kenyan parlance:

Clause 14 (2) (b)

65. KLRC further submitted that sub-clause (2) (b) of the Bill be deleted. They indicated that it is too general and vague and goes contrary to Article 94(6) of the Constitution.

Committee's Observations/Recommendations

That proposal was bound to limit the regulation making body yet the space of public participation is very fluid and keeps on changing.

General public participation guidelines.

66. KLRC submitted that the subsections (c), (d), (e), (f) and (g) of the Bill be deleted as the same were said to be repetitive as such have been mentioned in the Bill.

Committee's Observations/Recommendations

The Committee agreed with this proposal as there was a repletion of the clauses

Adequate time.

67. They submitted that the bill be amended by deleting paragraph (4) of the Schedule as such is repetition of 2.

Committee's Observations/Recommendations

Some of the recommendations had been taken into consideration in this Bill and the Attorney General had been given the mandate of implementing public participation under the policy.

COUNCIL OF GOVERNORS

Clause 1-Long title

68. The Council of Governors (COG) submitted that the long title of the Bill be amended to read as follows-

AN ACT of parliament to provide for a general framework for effective public participation; to give effect to the constitutional principles of democracy and participation of the people as provided for in the Constitution, and for connected purposes. On their end they noted that the specific provisions of the Constitution are outlined under section 4 as proposed in the section.

Committee's Observations/Recommendations

The proposal by the Council of Governors was adopted.

Clause 4 Object of the Act

69. Further, COG submitted that clause 4 of the Bill on the Objectives of the Act should be amended to read as follows '*give effect to the principles of public participation 'as provided for in Articles 1(2)/ 10(2), 35, 69(1) (d), 118, 175(c) and (d), 184 (1)(c), 196, 201 (a) and 232 (1) (d).* They noted that the amendment by the Council of governors seems to capture the entire scope of public participation and citizen engagement as envisioned by the Constitution.

Committee's Observations/Recommendations

The members agreed with the proposal to add all constitutional provisions that speak on the subject of public participation be included in the long title of the Bill.

Clause 14(2)(a) Regulations

70. In addition, the Council of Governors (COG) submitted that clause 14 (2) of the Bill should be amended to provide that the Cabinet Secretary in consultation with County Governments may make regulations for the better carrying out of the provisions of this Act. The COG on their end noted the proposal by pointing out that the Bill also applies to County Governments as seen under section 8 and 9.

71. Consequently, the COG suggested to add a new clause in the Schedule 1(2) in determining what is meaningful and important, the authority shall take into consideration:

- (a) clarity of the subject matter;
- (b) structure and process for public participation;
- (c) access to information;

- (d) commitment to the process;
- (e) inclusive and effective representation;
- (f) a belief in the value of public input;
- (g) ability to engage and standing of the participants; and
- (h) demonstration of transparency in the process.

72. Similarly, GOG noted that the proposal allows uniformity of standards, policies and methodologies across the two levels of government as well as allows for harmonization of the two levels relating to public participation in line with County Public Participation Guidelines.

Schedule paragraph

73. They submitted that the schedule 4 to the Bill be amended to read as follows; “A state organ or public office shall give the public 14 days’ notice to provide their input on the issues.” Significantly, timeliness should be clear to avoid confusion and different interpretations.

Committee’s Observation/Recommendation

The notion of providing that actual notice days was not tenable as the matters of public participation ought to be determined on a case-by-case basis some may require a very short time while others may require a longer period of time

JOINT KIAMBU CSO’S

Title

74. The Joint Kiambu CSO’S suggested that the title of the Bill be amended to include civic education. They noted that Public Participation should be both qualitative and quantitative where the qualitative bit is dependent on civic education.

Committee’s Observation/recommendation

The Committee did not adopt the proposal because introduction of civic education will broaden the scope and shift the intention of public participation. Since it is not provided for in the constitution, members observed that there was no need to include it in the title.

Clause 2 Interpretation

75. They further proposed the amendment of the Bill by defining the term “public participation” in government is any process that involves members of the public in government decision making, noting that there should be a difference between Public Participation and Community engagement.

Observation/Recommendations

The members did not adopt the definition of the term because the Bill encompassed all aspects of public participation.

Clause 4 Object of the Act

76. The Joint Kiambu CSO’S submitted that clause 4(a) of the Bill be amended as follows: add Article I of the Constitution as an Object of the Act whereas 4(d) be amended to make clear that Public Awareness includes civic education. As such gives effect to the Sovereignty of the People as the main philosophy of Public Participation. Public Awareness should include civic education which is core to public participation.

Committee's Observation/Recommendations

The committee rejected the proposal on the inclusion of civic education on grounds it is not provided as part of public participation in the Constitution of Kenya 2010.

Clause 5

77. The Joint Kiambu CSO'S suggested that clause 5 of the Bill be amended as follows;

"Without prejudice to the generality of section 3, each state organ or public office shall facilitate public participation in governance on matters including—

(a) formulation of policies;

(b) budgeting and financial management;

(c) law making processes; or

(d) any other matter as may be prescribed in the regulations"

They noted that the scope as it is, is limited and should be expanded in order to be more inclusive and cover all aspects of governance.

Committee's Observation/Recommendations

The Committee disagreed with the proposals because it does not add value to the Bill.

Clause 6(2)(e)

78. Further, they averred that the word "accountability" be included to the list provided in clause 6(2) (e).

Committee's Observation/Recommendations

The members agreed to the proposals for the purposes of assigning responsibility.

Clause 6

79. They further suggested that a new clause be amended to introduce a clause on Sovereignty of the People.

Committee's Observation/Recommendations

Disagreed with the proposals

Clause 7 (2) Rights of a Member of the public in public participation

80. The Joint Kiambu CSO'S submitted that the insertion of a new clause 7(2)(d) as follows;

"a member of the public has a right to receive timely and sufficient information prior to the Public Participation at least two weeks before the Public Participation forum". As such gives reasonable and definite time for the public to prepare their submissions.

Committee's Observation/Recommendations

The members disagreed with the proposal because specific timelines to be provided for in the schedule.

Clause 8 Determination of responsible authority.

81. The Joint Kiambu CSO'S averred that an independent Body to manage public participation should be established. As such ensure compliance and Monitoring and Evaluation on matters Civic Education and Public Participation.

Committee's Observation/Recommendations

The members disagreed with the proposal of forming a body since the Attorney General is the responsible authority.

Clause 12-Reports

82. The Joint Kiambu CSOs averred that the insertion of new clauses on—

- a) description of financial implications;
- b) number and description of matters subjected to public participation and Civic education;
- c) reporting of disaggregated data on attendance on public participation; and
- d) reporting of the Public Participation reports filed.

As that holds the bodies carrying out public participation accountable.

Committee's Observation/Recommendations

Disagreed with the proposals as it is not practical for the state agents to adhere to those set out guidelines.

Clause 13 Penalty

83. CSOs asserted that the clause to be amended include the offences.

Schedule

General public participation guidelines—Credibility and integrity of the Process.

84. The Joint Kiambu CSO's proposed that clause 7 of the Bill be amended in paragraph 7(c) to be amended as follows—

"the state organ or public body shall not engage in conduct involving dishonesty, fraud, deceit, misrepresentation or discrimination"

In their justification the Joint noted that any withholding of important budget documents from members of the public is equivalent to dishonesty, deceit and discrimination. As such the proposed Authority will ensure all key budget documents are provided publicly.

Committee's Observation/Recommendations

The members disagreed with the proposed fines were deemed to be too punitive.

MIN NO/DAA&GPC/PBL/2024/065: ADJOURNMENT

The meeting was adjourned at thirty minutes past three o'clock (3.20pm). The next meeting will be held on notice.

Signed.....

Date.....

13/6/2024

Hon. Daniel Epuyo Nanok, CBS, M.P.
Chairperson

MINUTES OF THE 16TH SITTING OF THE COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY HELD IN BARAZA CONFERENCE ROOM 2, AT SAROVA WHITESANDS, MOMBASA COUNTY ON SATURDAY 27TH APRIL, 2024 AT 10.00AM

PRESENT

1. The Hon. Daniel Epuyo Nanok, M.P. - **Chairperson**
2. The Hon. (Eng.) John Kiragu Chege, M.P.- **Vice Chairperson**
3. The Hon. Timothy Wanyonyi Wetangula, M.P.
4. The. Hon. Talib Ahmed Abubakar, M.P.
5. The Hon. Rindikiri Mugambi Murwithania, M.P.
6. The Hon. Anthony Kenga Mupe, M.P.
7. The Hon. Charles Onchoke Mamwacha, M.P.
8. The Hon. (Dr.) John Ariko Namoit, M.P.
9. The Hon. George Gachagua, M.P.

APOLOGIES

1. The Hon. Moses Malulu Injendi, M.P.
2. The Hon. Mohamed Mohamed Ali, M.P.
3. The Hon. Adams Kipsanai Korir, M.P.
4. The Hon. Raphael Sauti Wanjala, M.P
5. The Hon. James Gakuya Mwangi, M.P
6. The Hon. Oscar Kipchumba Sudi, M.P.
7. The Hon. Abdirahman Mohamed Abdi, M.P.
8. The Hon. Josses Kiptoo Lelmengit, M.P.
9. The Hon. Phelix Odiwuor Khodhe, M.P.
10. The Hon. Suzanne Ndunge Kiamba, M.P.
11. The Hon. John Waluke Koyi, M.P.
12. The Hon. Kitilai Ole Ntutu, M.P.

SECRETARIAT

- | | |
|----------------------------|-------------------------------|
| 1. Ms. Ella Kendi | Clerk Assistant I |
| 2. Ms. Marlene Ayiro | Senior Legal Counsel |
| 3. Mr. Silas Korir Lomutur | Research Officer III |
| 4. Mr. Jared Onyancha | Public Communications Officer |
| 5. Ms. Jacinta Maru | Serjeant-At-Arms |
| 6. Mr. Derrick Cheboi | Audio Officer Intern |

AGENDA

1. Preliminaries
 - i) Prayers
 - ii) Adoption of the Agenda
2. Confirmation of the Minutes of the previous sitting
3. Matters Arising

4. **Consideration of Part Four of the draft report on Public Participation Bill, 2023**
5. Any other Business
6. Adjournment and date of the next meeting

MIN.NO/DAA&GPC/PBL/2024/058: PRELIMINARIES

The meeting was called to order at ten o'clock (10.00am), followed by a word of prayer.

MIN.NO/DAA&GPC/PBL/2024/059: CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETINGS

The agenda was deferred

MIN. NO/DAA&GPC/PBL/2024/060: CONSIDERATION PART FOUR OF THE DRAFT REPORT ON PUBLIC PARTICIPATION BILL, 2023

The Legal Counsel took the Committee through the submissions received by various stakeholders clause by clause as follows;

National Gender and Equality Commission

Clause 2

1. The NGECE proposed interpretation of the new terms as follows: "Access" includes access to Information and services, fittings, amenities, build environment, and infrastructure as well as "Access to information" includes braille, sign language, large texts, websites, and local language. "Specific guidelines" means the specific public participation guideline developed by a responsible authority under section 8. This is for clarity purposes.

Committee Observation/ Recommendation

The proposal was agreed to for the purpose of inclusivity of persons with disability and clarity of the terms.

2. The NGECE further proposed introduction of new Part V on Miscellaneous on County Legislation as follows; County Legislation. A county shall enact county specific legislation generally for the better carrying out of the purposes and provisions of this Act

Committee observation/ Recommendation

The proposal was agreed upon as the national law to be overarching and counties were at liberty to formulate their own specific laws.

SCHEDULE

Paragraph (2)- notice

3. They submitted that paragraph 2 be amended by inserting the following additional items under Notice Requirements:

(g) Religious gatherings

(h). Notice Boards

(i). Social media

(j). Markets

They noted that the items are the most popular mechanisms of communication for the youth and the citizens at the grass roots.

Committee observations/ Recommendations

It was agreed to adopt the proposal as these are avenues for wide circulation of information.

Paragraph 3

4. The NGECE sought to have an amendment to paragraph (2) to read as follows; "A state organ or public office shall take all necessary measures to ensure the participation of persons with disabilities **and all various categories of vulnerabilities** in the public participation processes." They noted that the proposal by the Commission is premised on the fact that there are more vulnerable special interest groups that also need reasonable accommodation including the elderly and expectant mothers among others.
5. NGECE further suggested that paragraph (3) of the Bill be amended to provide for the option of making sign language available to persons with disabilities.
6. Additionally, NGECE opined that paragraph 3 of the Bill ought to be amended by inserting an additional sub-paragraph 4 that will ensure that venues or places for holding public participation forums are easily accessible to all without any difficulties or limitations.

Committee's Observation/ Recommendation

The proposal was adopted by the Committee for inclusivity purposes of persons with disabilities.

Paragraph 4 -Adequate time

7. The NGECE also suggested to amend paragraph 4 of the Bill to specify the timelines for **notice as ten days**. In a bid to ensure that the Members of the public have adequate time to submit meaningfully to the matters requiring participation.

Committee's Observation/Recommendation

The Committee disagreed with the proposal citing that indicating the exact number of days in the law will be prescriptive as circumstances vary from time to time.

Access to information for public participation

8. The NGECE in their submissions proposed an amendment to paragraph 5(1)(a) as follows-

a) paragraph 5(1)(a) be amended to read as follows;

publish and distribute the documents for consideration as widely as possible using the available means, including providing hard copies, radio and television advertisements, websites or community radio

announcements **and if necessary, educate and sensitise the public on the subject matter of the public participation;**

9. On their end they submitted that this was going equips the public with the necessary information that will enable them to participate meaningfully.

Committee's observation/ Recommendation

The Committee agreed with the proposal as it ensures that the public is sensitized on the subject matter of the public participation where necessary.

Processing of responses.

10. Schedule 6 (b) be amended to read as follows; *"the final decision is made available to the public including the reasons for the decisions taken **including the rejection of the submissions made.**"*
The basis is to communicate the reasons for the rejection of the proposals and minimise cases of complaints by the participants.

Committee Observations/ Recommendations

This was disagreed with as the practicability of this proposal at the implementation phase may not be tenable.

Centre For Economic Governance(CEG)

Clause 2 Interpretation

11. The CEG submitted that the definition of "public participation" be amended to read as *"Public participation means the process through which the public is engaged in understanding and contributing to decision making processes by state organs and public offices at the policy making, law making, implementation and **audit level**".* It submitted that this definition introduces public participation in audit processes aligning it to ongoing practice at the Office of the Auditor General and its specific department on social audits/social accountability.

Committee's observation /Recommendation

The Committee disagreed with the proposal stating that involvement of the public in the auditing process is an idea that can be realized progressively due to costly budgetary constraints.

Clause 12 Reports.

12. The Bill be amended in Clause 12(4) as follows—*"(b) information on the processes and the achievements of the public participation including number of forums and the outcomes."* On their end they submitted that the public participation report should have a summary of the outcomes of the public participation.

Committee's observation/recommendation

The proposal was disagreed upon by the Committee proposed amendment that would cater for their proposal

SCHEDULE

13. They further submitted that section 1 (b) be amended to remove the words “urgency of the matter”. CEG noted that the urgency of the matter will be subject to abuse by a state organ or public office may delay a particular matter and fail to conduct public participation arguing it is urgent.

SCHEDULE

14. CEG further suggested that in clause 2(3) of the Bill be amended by inserting a new paragraph immediately after paragraph (e)) on feedback as follows:

A public participation programme under subparagraph (1) shall clearly identify—(f) **“Feedback mechanisms to the public on the decisions made.”**

In their justification, they submitted that public offices and state organs should have clear guidelines on feedback mechanisms after every public participation engagement.

Committee’s Observation/ Recommendation

The proposal was disagreed with citing that providing feedback on each and every single decision made may not be practically possible.

SCHEDULE

15. CEG submitted that a new clause be inserted in the Bill to address Grievances/Complaints redress mechanisms (GRM/CRM) (or make reference to any law on petition).

16. A state organ or public body shall provide a complaints redress mechanism that ensures -

- a) Timely and comprehensive redress of the problems identified by the public throughout the public participation processes.
- b) all complaints are comprehensively reported and well documented, a mutually agreeable resolution to both parties and provide alternative resolution mechanisms in case one party disagrees with the proposed resolution.

In their justification they submitted that many public participation processes also lead to new petitions.

Committee’s observation/ Recommendation

The Committee agreed to the proposal justifying that there was need for a complaints redress mechanism **that had not been provided for in the Bill.**

University of Nairobi African Women Studies Research Centre

Clause 2

17. The stakeholder proposed the amendment of the definition of “public participation” to read as follows; “Public participation means the *qualitative and quantitative* process through which the public are *meaningfully* engaged in understanding and contributing to decision-making

processes by state organs and public offices at the policy making, law making and implementation level. This is to enhance a meaningful and inclusive public participation process.”

Committee’s observation/recommendation

The Committee disagreed with the proposal citing the plausible difficulty that may be encountered in a bid to measure what is qualitative and quantitative in the public participation process. The words qualitative and quantitative would lean towards data processing and therefore no relevant in the process.

18. The further proposed insertion of a new definition of meaningful participation “Meaningful Public Participation’ means a process that deliberately aims at engaging members of the public in a purposeful and real process that seeks their input to inform a public decision”. This is a guide to people undertaking the public participation to be more engaging and involve the members of the public.
19. They further proposed a new object to give a prescribed legal framework for public participation that is meaningful and purposeful for the citizens of Kenya

Committee observation/Recommendation

The proposal was disagreed upon with the proposal as it is difficult to measure meaningful public participation process.

SCHEDULE

Factors to be considered

20. On factors to be considered, the stakeholder proposed the addition of a sub-clause to read

- (i) ability of the targeted participants to access timely and relevant information
- (ii) inclusivity is important -equal access to opportunities to participate
- (iii) venue of the public participation

They justified that this is to make it mandatory for the institutions to ensure the information is easily accessible and ensure that the venues are accessible to the public

Committee’s observation/ Recommendation

The Committee adopted the proposal citing that this would ensure easier accessibility of the information.

Notice

21. Proposed that a state organ or public office shall give the public adequate notice, which shall not be less than 14 working days to make their input into the issue.

Committee observation/recommendation

The Committee disagreed with the proposal indicating that specifying the exact no of days would be restrictive.

Processing of responses

22. They proposed a new paragraph (d) to read as follows “an analysis of the responses obtained to ensure that the majority views are incorporated” This will help in making sure the entire process is meaningful.

Committee observation/ Recommendation

The proposal was disagreed upon as it will not be tenable to analyze the responses.

International Budget Partnership Kenya

General recommendations—Right to Public participation

23. The partnership suggested that the provision Clause 7 (1) of Part II that any member of the public or entity likely to be affected by a decision should have the right to participate in the decision-making process gives life to the principles of public participation found in Articles 1, 10, 35, 69, 118, 174, 184, 196, 201, and 232 of the Constitution of Kenya.

Committee’s Observation/ Recommendation

The Committee agreed with the proposal to isolate all articles dealing with Public Participation.

Lack of Definition of Meaningful Participation

24. International Budget Partnership Kenya further submitted that the bill does not provide guidance on what constitutes a meaningful public participation opportunity and therefore suggested some considerations for meaningful participation—
- a) **Access to information:** The availability and comprehensiveness of timely information relevant to the decision at hand. This should include a minimum threshold of what constitutes timely access to information.
 - b) **Decision at hand:** Clear communication of the agenda of public participation with details of who is affected by the decision, what information the public should refer to in their preparation.
 - c) **Inclusivity:** The need for inclusive and effective representation members of the public are likely to be affected by the decision.
 - d) **Facilitation of public participation:** Government officials who facilitate public deliberation should be well versed with the subject matter to support an informed dialogue between citizens and their government.
 - e) **Feedback:** Feedback refers to what happens after public deliberations. The mechanisms through which the public will be informed of their inputs on the decision, how their inputs informed the decision-making process and the decision itself.

On their end they submitted that since the onset of devolution different public bodies have overtime, developed their own legislations and policy on public participation. The current bill

does not seem to provide an idea of what will happen with these existing pieces of legislation.
Strengthening of requirement on reporting of Public Participation (Provision 12, 6 of Guidelines)

25. They further submitted that the public should also have access to these reports. As such, there should be an explicit requirement to publish and publicise the reports. The information to be included in these reports should include all input received during public participation engagements, how these responses were analyzed, who attended the engagement, the final outcome, and the reason for the outcome.

Committee's Observation/ Recommendation

The Committee was of the opinion that what was being sought by the stakeholder is already being done as most reports of public participation forums were public documents that could be assessed by any interested person.

Creation of mechanisms to enable timely access to information

26. Paragraphs 2, 4, 5 and 6 of the general guidelines are key to ensuring fair and timely access to information before and after public participation engagements. Further recommended that the regulations include the provision on the appointing of an access to information officer in all state of bodies as a port of call for information request provided for in Paragraph 7 (2) of the Access Information Act.

Committee Observations/ Recommendations

The Committee was of the view that the Access to information Act has set out mechanisms for access to information and the same should not find its way in this law (duplicity of laws).

CAUCUS ON DISABILITY RIGHTS ADVOCACY (CDRA) AND THE UNITED DISABLED PERSONS OF KENYA(UDPK)

Clause 4 Object of the Act

27. The CDRA and UDPK submitted that a new sub-clause be included in Clause 4 on the objects of the Act as follows

“(b)Promote inclusiveness in public participation for all persons and in particular persons with disabilities.”
Especially participation by persons with disabilities because it has been a big issue in terms of meaningful and effective participation.

Committee observations and Recommendation

The proposal was agreed to for inclusivity of persons with disabilities

Clause 6. Conduct of public participation.

28. CDRA and UDPK further submitted that the bill be amended by inserting the words “procedural accommodation’ in clause 6 (1) to read as follows — *A state organ or public office shall provide reasonable **procedural accommodation** and meaningful opportunities for public participation.* Procedural accommodation refers to accessibility of venue and ensuring that the

process provides for the needs of those who use different means of communication, e.g., sign language to facilitate participation by persons with disability. In particular, procedural accommodation refers to accessibility of venue and ensuring that the process provides for the needs of those who use different means of communication, e.g., sign language to facilitate participation by persons with disability. This is necessary to ensure participation by all including persons with disabilities.

Committee's Observation/ Recommendation

The proposal was agreed to by the Committee to make room for the inclusivity of persons with disability.

Clause 6 (2) (d)

29. They submitted that section 6(2)(d) read as (d) need for inclusive and effective representation **including the recognition of the need for reasonable accommodation.** In their justification, reasonable accommodation refers to specific needs of individuals to enable them to participate, for instance, the Deaf require sign language interpretation, the Blind may require information in Braille, and persons with intellectual disabilities and autism may require information in Easy Read.

Committee's Observation/ Recommendation

The proposal was agreed to by the Committee to make room for the inclusivity of persons with disabilities.

Clause 7 (2)

30. Clause 7(2)(b) of the Bill be amended as follows; "(b) attend a public participation forum and make presentation either orally, by way of written submission, **by Kenyan Sign Language or any other augmentative and alternative forms of communication** to a state organ or public office on the subject matter as may be determined. In their justification, Kenyan Sign Language is recognized in the Constitution in section 7(3) (b) where the state is obligated to promote its usage and development. There is a need to explicitly state that persons can make contributions through Sign Language to promote participation.

Committee observations and recommendation

The proposal was agreed to by the Committee to make room for the inclusivity of persons with disabilities.

Clause 9(2) Development of specific public participation guidelines

31. They submitted that a new sub-clause 2(c) be inserted in the Bill as follows "(2(c) *Provide specific guidelines on the participation of persons with disabilities in accessible means of communication including Braille, Sign Language or other appropriate means of communication.*" As such facilitates public participation by persons with disabilities.

Committee's observation/ recommendation

The proposal was agreed to by the Committee to make room for the inclusivity of persons with disabilities

Clause 11 Financial provisions

32. CDRA and UDPK further submitted that section 11 of the Bill be amended to read as "*A state organ or public office shall provide the necessary resources under this Act and shall include in its annual estimates provisions for expenses for purposes of undertaking public participation **and for purposes of ensuring full participation of persons with disabilities.***" Specifically, it should ring-fence resources allocated for public participation to cater for the participation of persons with disabilities

Committee's Observation/Recommendation

The proposal was disagreed with as the notice may vary from one entity to another therefore a blanket amendment on it may not be practical.

Clause 12 Reports.

33. It was submitted by the stakeholders that a new sub-clause 12(4)(b) be inserted to read as follows — "*12 (b) disaggregated data of the number of special interest groups, in particular persons with disabilities, who participated in the public participation forums.*"

Committee observations and recommendation

The proposal was agreed by the Committee to make room for the inclusivity of persons with disabilities.

Clause 13 Penalty

34. They further submitted that the Bill be amended in clause 13 to delete the words "no fine" appearing immediately after the word "fine".

Committee's Observations and Recommendation

The proposal was adopted as its sole purpose was to correct an existing typographical error in the Bill.

Schedule—General public participation guidelines.

Factors to be considered

35. They further submitted that clause 1(i) be amended to read as follows; "(i) the ability of the targeted participants to access the necessary information, including **in accessible formats, and the venue**". Especially, in recognition of the fact that there are people who access information in alternative methods as opposed to the common methods of information dissemination.

Committee's Observation/Recommendation

The proposal was agreed by the Committee to make room for the inclusivity of persons with disabilities.

Schedule—General public participation guidelines.

Paragraph 2 Notice.

36. The stakeholder further submitted to delete “adequate” and replace it with “**14 days**” in the paragraph to read as follows; “A state organ or public office shall give the public **14 days’ notice** to make input on the issue.” As such specifies the time makes the process predictable and timelines certain.

Committee ‘s Observations and Recommendation

The proposal was not adopted as specifying the number of days would be restrictive.

Notice.

37. They averred that section 2 (2) (c) of the bill be amended — by inserting the words “that are adherent to KS 2952 – Accessibility - ICT Products and Services by the Kenya Bureau of Standards’ immediately after the word “website”. As such ensure that websites used for the publication of public participation notices are accessible to persons with disabilities in their diversities.

Committee’s observations and recommendation

The proposal was agreed by the Committee to make room for the inclusivity of persons with disabilities.

Access to public participation processes.

38. They submitted that the words “meaningful and effective” be added to section 3(2) to read as: “A state organ or public office shall take all necessary measures to ensure the **meaningful and effective** participation of persons with disabilities in the public participation processes.” As such it emphasizes the participation of persons with disabilities to be meaningful and effective in line with Article 4 (3).

Committee’s Observation/Recommendation

The proposal disagreed as it is difficult to measure meaningfulness in a public participation process.

Adequate time.

39. A state organ or public office shall give the public **14 days’ notice** to make input on the issue. As such specifies the time makes the process predictable and timelines certain. Repetition in Notice.

Committee observation/ recommendation

The proposal was disagreed upon as the notice may vary from one entity to another therefore a blanket amendment on it may not be practical.

Access to information for public participation

40. They further suggested that section 5(1)(b) be read as: “to ensure that the documents are published and distributed in a language and form that can be used by the public **as well as Kenyan Sign Language, Braille, electronic and other alternative and augmentative communication methods.**” They indicated that there are other forms of communication, particularly for persons with various disabilities that are necessary to consider in all aspects of public participation

Committee Observation/ Recommendation

The proposal was adopted to allow for accommodation and inclusivity of persons with disabilities.

Access to information for public participation.

41. They submitted that clause 5 (3) (b) of the Bill be deleted. They stated that this provision as drafted contradicted the provision of Article 35 (1) of the Constitution which provides that every citizen has the right of access to information held by the State and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.

Committee Observation/ Recommendation

The proposal was adopted to allow for inclusivity of persons with disabilities

Processing of responses.

42. They submitted that paragraph (b) of the Bill be amended as follows; “(b) the final decision is made available to the public **in accessible formats, including the reasons for the decisions taken**”. As that indicates that there are other forms of communication, particularly for persons with various disabilities that are necessary to consider in all aspects of public participation.
43. Further, amend section (c) as follows; “*the disclosure of all relevant information **including all the proposals submitted and or considered.***” In their justification, they submitted that there is need to know if all submitted proposals were considered and included in the final decision made.

Committee Observation/ Recommendation

The Committee opined that the process of providing feedback for every decision made would not be tenable.

URAI TRUST

Section 14

44. Urai Trust submitted that Clause 14(1) be amended to insert a clause to define the scope and limitations of the Cabinet Secretary's authority to make regulations under the Bill. They noted that while it is important to grant the Cabinet Secretary the authority to make regulations for the better implementation of the Bill, it is crucial to specify the scope and the limits of such delegated powers. As that would help in avoiding potential misuse of authority and ensuring accountability.

Committee Observation/ Recommendation

The Committee was of the view that the clause on delegated legislations drafted was in order. Gagging the regulation making body in an area like public participation was seen to be retrogressive.

45. The Trust further submitted that Clause 14(2) (a) providing for the Cabinet Secretary's authority to specify additional institutions should include a requirement for public consultation before making such decisions to ensure a more inclusive and informed process. It further submitted that Clause 14(2)(b) should specify the criteria for the process by which the Cabinet Secretary determines the matters that need to be described, and require the Cabinet secretary to publish the reasons for prescribing certain matters for transparency and accountability.

Committee Observation/ Recommendation

The Committee was of the view that there was no need of providing an administrative procedure in the law, the Cabinet Secretary was bound to be well guided by clause 14(2)(b) and over legislating on the same was bound hamper decision making on the part of the Cabinet Secretary.

46. Additionally, the Trust averred that Clause 14(3)(c) be amended to elaborate the application of the principles and standards of Statutory Instruments Act and the Interpretation and General Provisions Act to the delegated powers in the Clause. In justification, the Trust asserted that it is important to specify the principles and standards applicable to the delegated powers.

Committee Observation/ Recommendation

The Committed opined that provision as drafted was clear and did not require any further amendment.

SCHEDULE

47. The Trust proposed for codification of the principles of public participation as enunciated by the courts in the Schedule on General Public Participation Guidelines. Specifically, the Trust proposed the inclusion of the need to adhere to the principle that public participation must be real and not illusory, and that it should not appear to be too cosmetic or a public relations act, so as to ensure that public participation is not turned into a mere formality undertaken as a matter of course just to fulfil a constitutional requirement.

Committee's Observations/Recommendation

The Committee was of the view that these principles enunciated by the Court had already found their way in the Public Participation Policy and should therefore not be included in this law.

COAST CIVIL SOCIETY NETWORK FOR HUMAN RIGHTS (CCSNHR)

Clause 2

48. The coast Civil Society Network for Human Rights submitted that the Bill be amended by providing for a new definition of the term "public" as follows — "public" includes individuals, community groups, civil society organizations, and businesses. As such ensure that all interested parties and stakeholders have the opportunity to participate in decision-making processes.

Committee Observation/ Recommendation

The Committee was of the opinion that the new proposed definition was not necessary.

49. General recommendations

Further, they provided the general recommendations—

- a) Enhance Access to Information: While the bill recognizes the right to request information, it should establish strict timelines for responding to requests and should minimise the discretion of state organs to withhold information. Additionally, it should ensure that the information is provided in a format accessible to all, including those with disabilities or who may not be proficient in the national language.
- b) Diversity and Inclusion: They indicated that there should be explicit requirements in the bill to ensure that public participation processes are accessible and inclusive. This includes providing interpreters for participants who are not proficient in the national language and sign interpreters for people with disabilities to accommodate all the groups in the community. Guidelines should also be developed to ensure representation from marginalised groups.
- c) Feedback Mechanism: They point out that it would be beneficial for the bill to include a phrase that allows the public entity to provide feedback on the public participation process on what has been adopted and what has not yet. This feedback is valuable, for making the government accountable to its citizens and encouraging the people to participate in public participation

Committee Observation/ Recommendation

The general spirit for inclusion of the needs and requirements for person with disabilities was a good addition to the Bill.

WECARE ORGANIZATION

Clause 2

50. WECARE Organization submitted that there was a need to amend the definition of “public participation” and proceeded to provide an alternative definition as follows “public participation means the process through which the public is fully engaged and involved in formulating, understanding, and contributing to the decision-making process and their views considered by state organs and public offices at the policy-making, law-making, implementation, and evaluation levels.” As such it makes it more effective, and inclusive and gives effect to article 1 (all sovereign power belongs to the people) of the Constitution.

Committee Observation/ Recommendation

The Committee in its observation was of the view that the definition of the term “public participation” in the Bill was sufficient

Clause 4

51. It further submitted that clause 4 of the Bill be amended to read as follows; “The object of this Act is to safeguard the sovereign power of the people of Kenya as enshrined in Article 1 of the Constitution.” The organization further submitted that the primary objective of this Act should be to recognize, safeguard and promote Article 1 of the Constitution.

Committee Observation/ Recommendation

The proposal was not agreed upon by the Committee as the objects of the Act were more than what the stakeholder had proposed.

Clause 7 (2)

52. It further submitted that the Bill be amended by inserting a new Clause 7(2)(d) as follows; “a member of the public taking part in the decision-making process should be given feedback on the extent to which their submissions or views have been considered or reasons for not being considered in giving effect to Article 35(1)(a) of the Constitution.” The organization noted that this gives effect to Article 35(1) of the Constitution which provides that members of the public have the right to access the information held by the State and the State shall publish and publicize any important information affecting the nation.

Committee Observation/ Recommendation

The Committee noted that implementation of established feedback mechanism on every decision made by an entity was not practical and the same was bound to attract huge financial cost. Publication of reports on websites and making them available to citizens was sufficient.

Clause 11 Financial provisions

53. They further submitted that the financing of public participation processes should be ring-fenced and, if possible capped at a given percentage of the annual budgets of state organs or public offices. As that avoids cases of corruption or wastage.

Committee observation/Recommendation

The committee observed that the law was clear each state organ is required to provide the necessary financial resources as per their needs/ requirements, that will ensure that the cardinal principle of public participation is catered for in decision making.

Clause 12 Reports.

54. Further they submitted that the Bill should be amended to make provision to insert a new paragraph after paragraph (b) to read as follows— section “12(4)(b) details of the level of inclusivity in the public participation process giving priority to people with disabilities, the marginalised, vulnerable and minority groups; and section 12(4)(c) the views considered from members of the public and the feedback given to the citizens to guide implementation and evaluation of the public participation processes.”

Committee observation/Recommendation

The aspect of inclusivity was important and may be added to some of the contents of the annual reports to be tabled in the National Assembly.

Clause 13 Penalty

55. They further submitted that clause 13 be amended to read as follows— “Any person who contravenes any provision of this Act if convicted be liable to a fine not exceeding five million shillings or imprisonment for a term not exceeding two years or both. “As such enhance penalty and clarity purposes.

Committee’s Observation/Recommendation

The proposal was not carried by the Committee as the penalties proposed were severe and very punitive.

SCHEDULE—General public participation guidelines.

Notice.

56. “A state organ or public office shall give the public 21 days' notice to make input on the issue.”
As such enhance participation, fairness, equity and inclusivity so that people from different regions who might be having difficulties with communication (medium or network availability and strength), interpretation, or accessibility can have enough time to discuss, understand and share inputs with relevant authority.

Committee’s observation/ Recommendation

The Committee opined that the aspect notice may vary from one entity to another therefore a blanket amendment on it may not be practical.

Schedule General public participation guidelines.

Access to information

57. WeCare further suggested that the documents and websites/ digital platforms should be disability friendly, i.e., have braille features, and availability of sign language interpreters among other means that will be deemed necessary. As this enhances accessibility to all members of the public.

Committee's Observation/ Recommendation

The proposal was adopted for inclusion of persons with disabilities.

Access to information for public participation

58. It further submitted that the Clause 5(1)(d) be amended to make provision for conducting of civic education, awareness, and public sensitization on the issues to be discussed before members of the public give their views. As this enhances public awareness and sensitization.

Committee's Observation/ Recommendation

The proposal was disagreed upon given the wide nature of civic education it may be impossible for any entity to deliver on its mandate.

KENYA CLIMATE CHANGE WORKING GROUP

Clause 2 Interpretation

59. The Group suggested insertion and definition of the term "public". with the aim of providing for clarity.

Committee's Observation/ Recommendation

The new definition was not necessary

Clause 12 Reports.

60. The Kenya Climate Change Working Group submitted that section 12(4a &b) should give the report that indicates how public participation was conducted and how it was inclusive and effective.

Committee's Observation/ Recommendation

The proposal though progressive was already provided for in the Bill.

Clause 14(2)(a) Regulations

61. The group further submitted that this provision be deleted on grounds that this may bring about conflict of interest as that avoids conflict of interest.

Committee's Observation/ Recommendation

The proposal was Not taken as clause 14(2) (b) seeks to give the regulating authority wiggle room to make prescribe any other matter that may be important in enhancing Public Participation.

SCHEDULE

Access to information for public participation

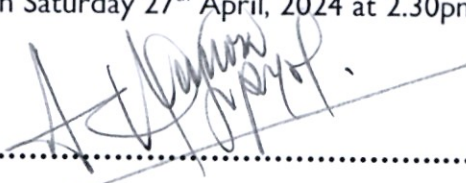
62. The Group further submitted that the costs should be incurred by the authority and not the public.

Committee's Observation/ Recommendation

The Access to information Act provides for the procedure of obtaining any information and the public is required to pay a small fee of facilitation of that information, otherwise it may be very costly for government to run if the cost is visited to it.

MIN NO/DAA&GPC/PBL/2024/061: ADJOURNMENT

The meeting was adjourned at thirty minutes past twelve o'clock (12.30pm). The next meeting will be held on Saturday 27th April, 2024 at 2.30pm.

Signed..........Date.....13/6/2024.....

Hon. Daniel Epuyo Nanok, CBS, M.P.
Chairperson

MINUTES OF THE 15TH SITTING OF THE COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY HELD IN BARAZA CONFERENCE ROOM 2, AT SAROVA WHITESANDS, MOMBASA COUNTY ON FRIDAY 26TH APRIL, 2024 AT 2.30P.M.

PRESENT

1. The Hon. Daniel Epuyo Nanok, M.P. - **Chairperson**
2. The Hon. (Eng.) John Kiragu Chege, M.P.- **Vice Chairperson**
3. The Hon. Timothy Wanyonyi Wetangula, M.P.
4. The. Hon. Talib Ahmed Abubakar, M.P.
5. The Hon. Rindikiri Mugambi Murwithania, M.P.
6. The Hon. Anthony Kenga Mupe, M.P.
7. The Hon. Charles Onchoke Mamwacha, M.P.
8. The Hon. (Dr.) John Ariko Namoit, M.P.
9. The Hon. George Gachagua, M.P.

APOLOGIES

1. The Hon. Moses Malulu Injendi, M.P.
2. The Hon. Mohamed Mohamed Ali, M.P.
3. The Hon. Adams Kipsanai Korir, M.P.
4. The Hon. Raphael Sauti Wanjala, M.P
5. The Hon. James Gakuya Mwangi, M.P
6. The Hon. Oscar Kipchumba Sudi, M.P.
7. The Hon. Abdirahman Mohamed Abdi, M.P.
8. The Hon. Josses Kiptoo Lelmengit, M.P.
9. The Hon. Phelix Odiwuor Khodhe, M.P.
10. The Hon. Suzanne Ndunge Kiamba, M.P.
11. The Hon. John Waluke Koyi, M.P.
12. The Hon. Kitilai Ole Ntutu, M.P.

SECRETARIAT

- | | |
|----------------------------|-------------------------------|
| 1. Ms. Ella Kendi | Clerk Assistant I |
| 2. Ms. Marlene Ayiro | Senior Legal Counsel |
| 3. Mr. Silas Korir Lomutur | Research Officer III |
| 4. Mr. Jared Onyancha | Public Communications Officer |
| 5. Ms. Jacinta Maru | Serjeant-At-Arms |
| 6. Mr. Derrick Cheboi | Audio Officer Intern |

AGENDA

1. Preliminaries
 - i) Prayers
 - ii) Adoption of the Agenda
2. Confirmation of the Minutes of the previous sitting
3. Matters Arising

4. **Consideration of Part Four of the draft report on Public Participation Bill, 2023**
5. Any other Business
6. Adjournment and date of the next meeting

MIN.NO/DAA&GPC/PBL/2024/054: PRELIMINARIES

The meeting was called to order at thirty minutes past two (2.30pm), followed by a word of prayer.

MIN.NO/DAA&GPC/PBL/2024/055: CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETINGS

The agenda was deferred

MIN. NO/DAA&GPC/PBL/2024/056: CONSIDERATION PART FOUR OF THE DRAFT REPORT ON PUBLIC PARTICIPATION BILL, 2023

The Legal Counsel took the Committee through Part four of the draft report which highlighted the submissions received by various stakeholders clause by clause as follows;

1. Following the placement of advertisements in the print media on Wednesday 25th, October 2023 and on Friday 26th January, 2024 inviting the public to submit their memoranda and notifying them of the public hearing on the Bill pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the following stakeholders submitted their views on the Bill, The National Treasury; Office of the Attorney General National; Gender and Equality Commission; Council of Governors; Centre for Economic Governance; African Women Studies Research Centre; International Budget Partnership Kenya; United Disabled Persons of Kenya; Urai Trust; Coast Civil Society Network for Human Rights; Wecare Organization; Kenya Climate Change Working Group; Civil Society Parliamentary Engagement Network (CSPEN); Centre for Intellectual Property and Information Technology Law; Kenya Devolution Civil Society Organization Working Group; Kenya Association of Manufacturers; Kenya Youth Federation; Health NGO Networks; Institute of Public Finance; Women challenged to challenge; and Dr. M. J Okumu, an Advocate.

The stakeholders submitted as follows:

The National Treasury and Economic Planning

Clause 1

2. The National Treasury in their submissions to the Committee proposed that the long title of the Bill be amended by adding Article 69 (1) (d) to contain all constitutional provisions on public participation.

Committee's observation/ Recommendation

The proposal was adopted by the Committee as it seeks to ensure inclusion of all constitutional provisions that make mention of public participation.

Clause 4

3. The National Treasury in their submissions proposed that Clause 4(a) of the Bill be amended by providing for public participation in matters to do with the environment as provided for

in Article 69 (1) (d) of the Constitution, noting that adding Article 69(1)(d) it promotes public participation in the environment.

Committee's observation/ Recommendation

The proposal was adopted by the Committee as it allows for public participation on matters concerning the environment.

Clause 6

4. The National Treasury further suggested that sub-clause 6(1) be amended by providing a concise definition of the term "meaningful" the definition should be defined to provide a threshold that provides for clarity purposes. They further proposed that sub-clause 6(2) of the Bill be amended by inserting the word "office" after "public" so that the phrase reads "State Organ and Public office".

Committee's observation/ Recommendation

The proposal was agreed to for the purpose of clarity

Clause 8

5. They asserted that there is a need to include Accounting Officers of the different agencies and parastatals in Government to be responsible authorities. The reason given is that public participation requires funding.

Committee's observation/ Recommendation

The Committee disagreed with the proposal as the Attorney General is the responsible authority as is provided for in the approved Public Participation Policy.

Clause 9(4)

6. The National Treasury further submitted that clause (9)(4) of the Bill be introduced that provides as follows- "where there is a conflict between the provisions of this Act and any other written law, the provisions of this Act shall prevail"

Committee's Observation/ Recommendation

The proposal was agreed to as it was seeking to provide for order and alignment of the county specific law with the national law.

SCHEDULE

Paragraph 2 Notice

7. The National Treasury opined that section 2(1) was of the view that the words "adequate notice" be deleted and be replaced with at least twenty-one (21) days' notice.

Committee's Observation/ Recommendation

The committee was of the view that dictating the exact number of days would be too prescriptive and limiting.

Section 2(2) "social media handles "be added so as to be able to reach the youth.

Committee's Observation/ Recommendation

The Committee adopted the proposal as it sought to ensure wide coverage and reach on matters that concerned the Public.

Paragraph 4

8. The National Treasury further submitted that the Bill be amended by deleting the words “adequate notice” and substituting the same with “at least twenty-one-day notice”.

Committee’s Observation/ Recommendation

The proposal was disagreed with as dictating exact number of days would be restrictive owing to the fact that matters of public participation vary from one sector to another and different time frames may then be required.

Paragraph 5. (1)

9. Paragraph 5(1) (a), be amended to include social media.

Committee’s Observation/ Recommendation

The Committee adopted the proposal as it would ensure wide coverage/ reach and easier accessibility of the information.

Office of the Attorney General (OAG)

Clause 2

10. The OAG proposed revision the definition of “Cabinet Secretary”, to align with Kenya Public Participation Policy which identifies the Office of the Attorney General as the lead agency in implementation of the Policy and in collaboration with the Ministry responsible for devolution. The AOG is mandated to establish a multi sectoral coordination framework for ensuring effective public participation. As such the amendment improves the description of that term leaving no ambiguity.
11. The OAG further suggested that the bill be amended in the definition of the word Cabinet Secretary as substituting therefore the new definition “The Cabinet Secretary “means the Attorney General. As such specifically clarify purposes as there is no Minister for Justice.

Committee’s Observation/ Recommendation

The proposal was agreed to as it clarifies and points out who the designated responsible office/ authority is.

12. The OAG further submitted that the term public participation be amended as follows-“Public participation “means the process by which citizens, as individuals, groups or communities take part in the conduct of public affairs, interact with the state and other non-state actors to influence decision, policies, programs, legislations, and provide oversight in service delivery development and other matters concerning their governance and public interest either directly or indirectly through freely chosen representatives. This definition is what is provided for in the draft Public Participation Policy.

Committee’s Observation/ Recommendation

The Committee disagreed with the proposal as the definition provided for in the bill was adequate.

Insertion of New Definitions

13. The Office of the OAG further proposed that the Bill be amended by providing for the following new definitions be inserted in the bill in the proper sequence:

“individual” means any citizen or resident of the country, regardless of age, gender, ethnicity, social status or any other differentiating factor;

“groups of individuals” includes but not limited to, communities, associations, organizations and social movements; and

“legal person” includes an entity recognized by law with legal rights and responsibilities such as a company, a non-profit organization and a trade union.

Committee’s Observation/ Recommendation

The Committee disagreed with the proposal

Clause 9 (1)

14. They suggested that the redraft of clause 9 be amended to provide for responsible authorities to develop operational or administrative guidelines. As such harmonize the responsibilities of Cabinet Secretary under clause 14 and those of responsible authorities under clause 9.

Committee’s Observation/ Recommendation

The proposal was agreed to for the purpose of harmonizing the responsibilities of Cabinet Secretary under clause 14 and those of responsible authorities under clause 9.

Clause 12 Reports.

15. Additionally, it further submitted that the Bill be amended in the section for annual reports by inserting a new paragraph immediately after paragraph (a)-

(aa) information on—

(i) how the public is informed about opportunities to participate with respect to public participation;

(ii) public participation budget;

(iii) disaggregated participation data; and modalities of public participation engagement

On their end this provides specific information that the authorities are to provide to Parliament and County Assemblies.

Committee’s Observation/ Recommendation

The Committee disagreed with the proposal indicating that specifying the information would be relevant in the Policy as opposed to providing for the same in a law.

Clause 13 Penalty

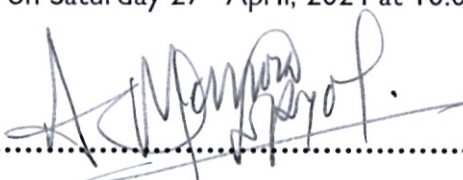
16. The OAG made a proposal for the amendment of the Bill to provide a part for dispute resolution as follows- 13A. The Attorney –General shall, in consultation with institutions mandated to handle public complaints, promote alternative dispute resolution methods in the resolution of complaints relating to public participation. To provide for the use of alternative dispute resolution mechanisms where conflicts arise in public participation.

Committee's Observation/ Recommendation

The Committee agreed to the proposal as this would provide mechanisms for Dispute resolution in the parlance of Public Participation which had not been provided for in the Bill. The proposal was agreed for the purpose of establishing an office with clear roles and functions.

MIN NO/DAA&GPC/PBL/2024/057: ADJOURNMENT

The meeting was adjourned at fifty-five minutes past three o'clock (3.55pm). The next meeting will be held on Saturday 27th April, 2024 at 10.00am

Signed..........Date.....13/06/2024.....

**Hon. Daniel Epuyo Nanok, CBS, M.P.
Chairperson**

MINUTES OF THE 14TH SITTING OF THE COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY HELD IN BARAZA CONFERENCE ROOM 2, AT SAROVA WHITESANDS, MOMBASA COUNTY ON FRIDAY 26TH APRIL, 2024 AT 9.30AM.

PRESENT

1. The Hon. Daniel Epuyo Nanok, M.P. - **Chairperson**
2. The Hon. (Eng.) John Kiragu Chege, M.P.- **Vice Chairperson**
3. The Hon. Timothy Wanyonyi Wetangula, M.P.
4. The Hon. Talib Ahmed Abubakar, M.P.
5. The Hon. Rindikiri Mugambi Murwithania, M.P.
6. The Hon. Anthony Kenga Mupe, M.P.
7. The Hon. Charles Onchoke Mamwacha, M.P.
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AGENDA

1. Preliminaries
 - i) Prayers
 - ii) Adoption of the Agenda
2. Confirmation of the Minutes of the previous sitting
3. Matters Arising

4. **Consideration of part one and part two of the draft report on Public Participation Bill, 2023**
5. Any other Business
6. Adjournment and date of the next meeting

MIN.NO/DAA&GPC/PBL/2024/050: PRELIMINARIES

The meeting was called to order at thirty-five minutes past nine (9. 35a.m), followed by a word of prayer.

MIN.NO/DAA&GPC/PBL/2024/051: CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETINGS

The agenda was deferred

MIN. NO/DAA&GPC/PBL/2024/052: CONSIDERATION PART ONE AND TWO OF THE DRAFT REPORT ON PUBLIC PARTICIPATION BILL, 2023

The Committee was taken through Part one and part two of the Bill which provided highlighted the background, comparative analysis and an overview of the Bill as follows;

Introduction and Situational Analysis

1. Public participation is when members of society are involved in the decision-making process by public entities. Legislative bodies are required to include the public or a representative group in their decision-making. Public participation in the legislative process allows the public to influence the decisions made by lawmakers. The importance of public involvement in legislative processes is universally recognized in constitutional democracies.
2. The 2010 Constitution establishes public participation as one of the national values and principles of governance, as an expression of the sovereignty of the people¹. These values and principles are binding on all state organs and individuals when enacting, applying, or implementing any law. Article 10(2)(a) of the Constitution of Kenya, 2010, encapsulates the national values and principles of governance, including the participation of the people.
3. Public participation is a cornerstone of Kenya's democracy, playing a significant role in the legislative and policy functions of both national and county governments². It is essential to facilitate public participation to ensure the legitimacy and credibility of decisions and policies made by public entities. By providing meaningful opportunities for the public to express their views and opinions in decision-making, governments at all levels can incorporate diverse perspectives and address the interests and needs of citizens. Despite its importance, engaging citizens in government processes poses challenges for Kenyan both the executive and legislatures. Issues such as institutional corruption and disconnect between state organs and

¹ *Mui Coal v Ministry of Energy* [2015] eKLR.

² *Robert Gakuru v Governor Kiambu* [2014] eKLR.

citizens often impede meaningful public participation, eroding trust in the government and undermining confidence in decision-making processes.³

4. Another challenge lies in distinguishing public participation from other forms of engagement, such as information sharing or consultation. Genuine public participation requires active engagement and consideration of public input in decision-making, going beyond mere information provision or consultation. Efforts aimed at facilitating public participation should focus on meaningful engagement rather than superficial activities. When public participation is reduced to rubber-stamping exercises, it undermines the set out democratic principles it is meant to uphold.
5. Presently, the existing legal framework and jurisprudence in Kenya have not fully addressed the shortcomings in public participation mechanisms. It is imperative to strengthen these frameworks to ensure that public participation is not merely symbolic but offers a genuine opportunity for citizens to influence government decisions and policies.
6. Both the National and County Governments should establish clear guidelines and processes to ensure consistent and robust public participation, irrespective of the specific context or issues under consideration.
7. The existing spaces and modalities for public participation tend to favour specific stakeholders, limiting access to only certain groups. Those responsible for creating these spaces often dictate the rules and procedures of public participation.
8. Moreover, public participation in government processes is structured as invited spaces, where the issues, timing, format, venue, agenda, and process are defined by the state rather than the people. State organs have shown tendencies to centralize decision-making, marginalizing citizens as mere spectators and impeding their active involvement in government processes.⁴

Comparative Analysis

The Committee was informed as follows; -

9. In **South Africa**, the policy framework provides a foundation for public participation in democratic governance. The National Assembly, Provincial Legislatures, and Municipal Councils are required to involve the public in their processes. The SA Constitution makes provision for public participation. The Department of Public Service and Administration issues frameworks and guidelines for public participation, offering practical guidance. The government also provides information, education, and opportunities for the public to get involved. The establishment of an education office and the use of the South African Broadcasting Corporation to inform the public about parliamentary activities reach a wide audience. Workshops and conferences in rural areas demonstrate a commitment to

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Mui Coal v Ministry of Energy [2015] eKLR.

⁴ *John Muraya Mwangi & 501 Others v Minister for State for Provincial Administration & Internal Security & 4 Others* [2014] eKLR.

inclusivity and ensuring that all voices are heard. Additionally, allowing electronic submissions leverages technology and enhances accessibility and convenience for public participation in the legislative process.⁵

10. **In Canada**, the government recognizes the importance of engaging citizens and civil society in governance to enhance the legitimacy of public institutions, improve public policy quality, and foster responsive public services. The Department of Justice has **policies and guidelines** for public participation that shape the department's activities. The policy underscores the commitment of the Department of Justice to involve Canadians in the development of legislation, policies, programs, and services through transparent, accessible, and accountable processes. It aims to ensure that public participation is supported by factual information and inclusive of Canada's diversity⁶. While Canada's Parliament lacks explicit legislation mandating public participation, the institution has established a policy on public engagement and employs various mechanisms to facilitate it.
11. **In Scotland**, the Citizens' Participation and Public Petitions Committee was established during the sixth session of the Scottish Parliament. The committee's mandate includes citizen participation and post-legislative scrutiny. They utilise deliberative democracy methods such as Citizen's Assemblies to include people's voices.⁷ In 2022, the committee launched an inquiry to ensure people's voices are heard in the Parliament's work. They use media outlets, documentaries, and short films to highlight Parliament's successes and real-life stories of engagement in order to improve public perception and trust. Positive interactions with Parliament are encouraged to be shared through various media platforms. This includes asking for public input on '**Your Priorities**' on the Scottish Parliament website, carrying out further evidence-taking and fact-finding, and creating a minimum standard of response for engagement. This standard includes initial acknowledgement, follow-up on the number of responses and the outcome of the inquiry, and providing more information through signposting.

Overview of the Bill

The Committee was informed that the Bill has fourteen (14) clauses with the following provisions; -

Part I: Preliminary

12. Clause 1 to 3 of the Bill provide for the preliminary provisions, that is short title, interpretation of the terms as used in the Bill, objects and applications of the Bill. The clauses provide that the Bill shall apply to all public offices, state organs and all persons in Kenya whenever any of them applies or interprets the Constitution or any written law; or makes or implements any public policy decisions.

⁵ Public Participation Framework for the South African Legislative Sector, <https://dokumen.tips/documents/public-participation-framework-for-the-south-african-salsgovzadocspubsppfpdf.html?page=1>

⁶ Policy Statement and Guidelines for Public Participation - Department of Justice, <https://www.justice.gc.ca/eng/cons/pol.html>

⁷ Public Participation in the Scottish Parliament, <https://bprcdn.parliament.scot/published/CPPP/2022/12/16/741396a1-57a0-4a7b-aa80-390ad171287a-2/CPPPS062022R2.pdf>

13. Clause 4 provides for objects of the Act

Part II: Public Participation

14. Clause 5 provides for the scope of public participation.

15. Clause 6 provides for the conduct of public participation.

16. Clause 7 provides for the rights of a member of the public in public participation.

17. Clause 8 provides for the determination of the responsible authority.

18. Clause 9 provides for the public participation guidelines.

19. Clause 10 provides for the publication of the specific public participation guidelines.

Part III: Miscellaneous Provisions

20. Clause 11 to 13 provides for financial provisions, reports and general penalty.

21. Clause 11 provides that a state organ or public office shall provide the necessary resources and shall include in its annual estimates' provisions for expenses for purposes of undertaking public participation.

22. Clause 12 provides that each state organ or public office shall prepare an annual report on public participation at the end of each financial year containing a description of any complaints made against the institution in respect of public participation, the action taken and the period within which the complaint was addressed; and any other information that the responsible authority may consider relevant.

23. Clause 13 provides for a general penalty. A person who contravenes a provision of the Act commits an offence and shall upon conviction, be liable to a fine not exceeding three hundred thousand shillings or imprisonment for a term not exceeding six months, or to both.

Part IV: Provisions and Delegated Powers

24. Clause 14 provides for regulations. The Cabinet Secretary may make regulations for specifying additional institutions not specified under the Act and any other matter required to be prescribed under this Act.

Schedule to the Bill

25. The Schedule to the Bill provides for the general public participation guidelines.

The Committee agreed to part 1 and part 2 of the bill as highlighted.

MIN NO/DAA&GPC/PBL/2024/053: ADJOURNMENT

The meeting was adjourned at five minutes past one o'clock (1.05pm). The next meeting will be held at 2.30pm.

Signed.....Date.....13/6/2024

Hon. Daniel Epuyo Nanok, CBS, M.P.
Chairperson

**MINUTES OF THE 11TH SITTING OF THE COMMITTEE ON PARLIAMENTARY
BROADCASTING AND LIBRARY HELD IN COMMITTEE ROOM 12, MAIN
PARLIAMENT BUILDINGS ON THURSDAY, 7TH MARCH, 2024 AT 11.00 AM.**

PRESENT

1. The Hon. Daniel Epuyo Nanok, M.P. - Chairperson
2. The Hon. Moses Malulu Injendi, M.P.
3. The Hon. John Waluke Koyi, M.P.
4. The Hon. Timothy Wanyonyi Wetangula, M.P.
5. The Hon. Anthony Kenga Mupe, M.P.
6. The Hon. Abdirahman Mohamed Abdi, M.P.
7. The Hon. Charles Onchoke Mamwacha, M.P.
8. The Hon. Josses Kiptoo Lelmengit, M.P.
9. The Hon. Kitilai Ole Ntutu, M.P.
10. The Hon. Suzanne Ndunge Kiamba, M.P.
11. The Hon. Talib Ahmed Abubakar, M.P.

APOLOGIES

1. The Hon. (Eng.) John Kiragu Chege, M.P.- Vice Chairperson
2. The Hon. Mohamed Mohamed Ali, M.P.
3. The Hon. Raphael Sauti Wanjala, M.P.
4. The Hon. James Gakuya Mwangi, M.P.
5. The Hon. Oscar Kipchumba Sudi, M.P.
6. The Hon. Rindikiri Mugambi Murwithania, M.P.
7. The Hon. Adams Kipsanai Korir, M.P.
8. The Hon. George Gachagua, M.P.
9. The Hon. (Dr.) John Ariko Namoit, M.P.
10. The Hon. Phelix Odiwuor Khodhe, M.P.

IN-ATTENDANCE

SECRETARIAT

- | | |
|-----------------------------|-------------------------------|
| 1. Ms. Ella Kendi | Clerk Assistant I |
| 2. Ms. Fidlizah S. Mwangogo | Clerk Assistant III |
| 3. Ms. Marlne Ayiro | Principal Legal Counsel |
| 4. Ms. Noelle Chelagat | Media Relations Officer |
| 5. Mr. Silas Korir Lomutur | Research Officer III |
| 6. Mr. Jared Onyancha | Public Communications Officer |
| 7. Mr. Meldrick Sakani | Audio Officer |

STATE DEPARTMENT FOR PARLIAMENTARY AFFAIRS

1. Mr. Nick Biketi - Secretary, Office of Prime Cabinet Secretary
2. Ms. April Nyangayi - Intern, Office of Prime Cabinet Secretary

AGENDA

1. Preliminaries
 - i) Prayers
 - ii) Adoption of the Agenda
2. Confirmation of the Minutes of the previous sitting
3. Matters Arising
4. **Meeting with the Principal Secretary State Department for Parliamentary Affairs to consider their memoranda on Public Participation Bill, 2023**
5. Any other Business
6. Adjournment and date of the next meeting

MIN NO/DAA&GPC/PBL/2024/040: **PRELIMINARIES**

The meeting was called to order at eleven in the morning (11.00 a.m.), followed by a word of prayer and introductions thereafter. The agenda of the meeting was adopted having been proposed by Hon. Charles Onchoke Mamwacha, M.P. and seconded by Hon. Talib Ahmed Abubakar, M.P.

Further, Mr. Nick Biketi Secretary in the Office Prime Cabinet Secretary conveyed an apology from the Principal Secretary for not being able to attend the meeting due to unavoidable reasons. However, the Committee noted that there was no written communication from the PS informing the Committee of the same. Following the deliberations, the Committee resolved that the Committee be taken through the submissions and incase of any clarifications, the Principal Secretary be invited for a meeting to respond.

MIN NO/DAA&GPC/PBL/2024/041: **SUBMISSION FROM THE OFFICE OF THE PRIME CABINET SECRETARY**

Mr. Nick Biketi, Secretary Office of the Prime Cabinet Secretary, took the Committee through the submission on the Public Participation Bill, 2023 as follows; -

1. The Committee's desire to legislate on this issue of extreme public interest is a shared one. That public participation has to date not benefitted from a Parliament sanctioned stand-alone legal framework yet is should. The consequence of this vacuum was that the regulatory space has been occupied by scattered sector legislation, statutory instruments and judicial decisions based on an interpretation of some six Articles of the Constitution. Public participation has, for example, been an issue of contention in approximately 2,182 judicial decisions. This is according to the number of reported judicial decisions available on the National Council for Law Reporting platform, kenyalaw.org.
2. On the other hand, Parliament has enacted approximately 47 sector specific laws that provide for public participation/involvement or participation of the people within those sectors. The provisions range from simple statements on applicable values and principles, entire chapters on "public participation and access to information"; and provisions that empower the responsible Cabinet Secretary to make sector regulations on public participation. Such laws include the Public Service (Values and Principles) Act (Cap. 185), the County Governments Act (Cap. 265), the Climate Change Act (Cap 387A), the Sustainable Waste Management Act (Cap 387C) etc.
3. Some of these existing sector laws have not defined what public participation is while others have made an attempt to do so. For example – The Wildlife Conservation and Management Act (Cap. 376) defines "public participation" to mean –

“active involvement by the citizenry in decision making processes through, inter alia, use of the national media, relevant consultative mechanisms and public hearings.”

The Statutory Instruments Act (Cap 2A) on its part defines “public participation” to mean *“involvement by the regulation-making authority of persons or stakeholders that the statutory instrument may directly or indirectly apply to”*

The Kenya Policy on Public Participation also has its own definition of what “public participation” is. It defines “public participation” to mean – *“the process by which citizens, as individuals, groups or communities take part in the conduct of public affairs, interact with the state and other non-state actors to influence decisions, policies, programs, legislation and provide oversight in service delivery, development and other matters concerning their governance and public interest either directly or indirectly through freely chosen representatives.”*

4. In full appreciation of this reality, the Cabinet sitting on 18th April, 2023, directed the Office of the Attorney General in consultation with the Office of the Prime Cabinet Secretary to develop a harmonized Public Participation Bill incorporating the key features of all the Bills that had been tabled in Parliament before the lapse of the tenure of the last Parliament. The Cabinet also approved the Kenya Policy on Public Participation on 16th May, 2023.
5. In directing the development of a Government sponsored Public Participation Bill, Cabinet noted that there was need for a regulatory framework that better fosters predictability on how public participation is realized with regard to the development of laws, policies, subsidiary legislation, sessional papers, conventions and treaties etc.
6. The Government sponsored Public Participation Bill has been undergoing the first level of public participation i.e. stakeholder engagement and has so far received valuable feedback from various State Departments.
7. Under the current interpretation, the Government duplicates public participation for matters to be considered by the two arms of Government. We have public participation conducted by the National Executive under Articles 10(2), 69(1)(d), 201(a) and 232(1)(d) of the Constitution. The same matters are again subjected to Article 118 public participation when they transit to Parliament. A comparative situation plays out when it comes to matters at the county level.
8. As a result, there was inefficient utilization of time as well as the limited resources available to us as a country. This point is key to this Committee because Clause 11 of the Bill provides that *“A state organ or public office shall provide the necessary resources under this Act and shall include in its annual estimates provisions for expenses for purposes of undertaking public participation.”* This underscores the centrality of financial resources in the realization of meaningful public participation.
9. The proposed policy on public participation eliminate the duplicity embedded in our current public participation practice. This invite is supported by the fact that the Government of Kenya is one with various arms charged with distinct functions.
10. On the one hand, the Executive implements laws and policies adopted by Parliament and is generally vested with the power to execute projects and programs that drive the country's development agenda. Parliament on the other hand exercises, law-making, representation and oversight functions. Within this distribution of state power, the Executive proposes laws, policies, budget and fiscal measures while Parliament enacts. Accordingly, policy and law-making processes that bestride both the Executive and Legislature arms of Government should be viewed as a continuum.
11. Where processes straddle both arms of government, the Executive should be expressly empowered to undertake targeted public participation otherwise known as stakeholder

engagement while Parliament as the law making and representation arm of Government, conducts its Article 118 public participation which is further strengthened by the Standing Orders and the Parliamentary Service Act (Cap. 186).

12. Open public participation should however apply for matters that either terminate in the Executive or which Parliament doesn't subject to public participation under Article 118. Such matters include statutory instruments, public policies and such aspects of programs and projects that terminate at the Executive.
13. To this end, it was proposed introduction of a clause in the Bill that recognizes "open public participation" and "targeted public participation as categories of public participation.
14. Clause 9 of Bill regarding the development of Specific Public Participation Guidelines presents implementation challenges which should be ironed out as follows;
 - a) Some sector laws have public participation set out as part of the general values and principles guiding the application of the law. Others have entire chapters titled "Public Participation and Access to Information" while others provide for Regulations on Public Participation.
 - b) From a coordination perspective, the requirement for Specific Guidelines and the adoption of the General Guidelines set out in the Bill shall likely cause a conflict of laws between the stand-alone public participation law and the sector laws that already provide for public participation modalities. Should a public entity apply the modalities under its sector law or should it apply the guidelines under the PP law? This presents a compliance conundrum.
 - c) To forestall this potential conflict, they proposed amending the Bill to either exempt the application of Clause 9 to public entities whose sector laws have express provisions on public participation OR include a conflict of laws provision that prevails the public participation law in case of conflict with another law. their proposed conflict of laws provision reads –
 - "1) This Act serves as a national law and applies to both levels of government. All public participation laws enacted prior to the commencement of this Act shall be read together and in conformity to this Act.*
 - 2) Where there is a conflict between the provisions of this Act and any other written law, the provisions of this Act shall prevail."*
 - d) Secondly, it was pointed out that there is an internal inconsistency between Clause 9(1), 9(4) and 9(5) of the Bill. While Clause 9(1) requires an MDA to develop Specific Public Participation Guidelines, Clause 9(4) nevertheless forbids MDAs from derogating from the General Public Participation Guidelines set out in the Bill and its Schedule. Clause 9(5) then provides that the Statutory Instruments Act shall apply in the development of these Specific Guidelines. This meant that the Specific Guidelines shall largely take the form and content of the General Guidelines already prescribed in law and therefore does not justify why the Specific Guidelines should be taken through the vigor of compliance with the Statutory Instruments Act and committal of the attendant resources.
 - e) On this issue of Special Guidelines therefore, they proposed adopting the approach of the Leadership and Integrity Act (Cap185C) with respect to the General Leadership and Integrity Code vis-a-vis the Specific Leadership and Integrity Codes for State Officers.
 - f) In the case of the Public Participation Bill, the office to approve the Specific Guidelines on Public Participation should be the Cabinet Secretary identified under Clause 2 of the Bill. The alternative to this is to create an Office of the Registrar of Public Participation within the Public Service of the National Executive (and housed

in the Department responsible for Justice). Apart from approving the Specific Guidelines, the Registrar shall also –

- i. Develop and implement a public participation monitoring, evaluation, assessment and learning framework;
- ii. Maintain a database of public participation reports;
- iii. Submit to the Cabinet Secretary periodic reports on the status of public participation;
- iv. Publish an annual report on public participation under this Act;
- v. Recommend to responsible authorities' measures to be taken to ensure compliance with the Act;
- vi. Formulate, implement and review public education initiatives;
- vii. Conduct capacity building for responsible authorities; and
- viii. Perform such other functions as may be provided for under the Act or any other written legislation.

g) It was therefore proposed amending the Bill to expressly exempt the National Executive's Specific Guidelines from the application of the Statutory Instruments Act.

h) It was pointed out that should the Committee retain the application of the Statutory Instruments Act, it may consider reviewing the timeline within which to develop and publish the Specific Guidelines as proposed under Clause 10(1) from six months to one year to give adequate room for compliance with all necessary steps under the Statutory Instruments Act.

15. It was further proposed amending the definition of the Cabinet Secretary to delete the reference to the Attorney-General or, if the intention is to have the Attorney-General administer the Public participation law, replace the entire definition of "Cabinet Secretary with the Attorney-General". This will avoid the legal pitfalls on whether the Attorney-General can exercise ministerial powers such as the administration of Acts of Parliament;

"Attorney-General" means the Attorney-General appointed under Article 156 of the Constitution"

16. Amend Clause 4 of the Bill to also include, as an additional object that reads – *"ensure effective participation of children, women, youth, persons living with disability, older members of the society, Kenyan diaspora, minorities and marginalized groups at all levels of governance."*

17. They stated that in the event the Committee is agreeable with the establishment of the Office of the Registrar of Political Parties we propose that a) the Qualifications be deferred to the Public Service Commission OR b) the qualifications be expressly provided in the Act as follows –

"A person shall be qualified for appointment as Registrar if the person –

- a) *Is a citizen of Kenya;*
- b) *Holds a degree from a recognized university in Kenya;*
- c) *Has proven experience in the following areas –*
 - i) *Community development;*
 - ii) *Development studies;*
 - iii) *Economics;*
 - iv) *Law;*
 - v) *Public administration;*
 - vi) *Political science;*
 - vii) *Sociology;*
 - viii) *Governance*

- d) *Has a minimum of fifteen years' experience in public service or the private sector post qualification.*
- e) *Is a person of high moral character and integrity and has satisfied the requirements of chapter six of the Constitution?"*
18. The State Department further proposed introduction of a provision requiring responsible authorities to submit public participation reports to the Registrar of Public Participation. These reports shall serve as critical information tools in analyzing the state of compliance with the Public Participation law. As it is right now, the State has no forehand knowledge on the state of compliance with the current public participation framework. It is currently only playing out in the Judiciary. Our proposed provision reads –
"Within fourteen days after the completion of a public participation exercise, the responsible authority shall submit to the Registrar, a report of the exercise."
19. They noted that that it is the Executive's responsibility under Article 132(1)(c)(i) to report to Parliament every year on all the measures taken and the progress achieved in the realization of the National Values and Principles under Article 10; public participation being one of them.
20. For the purpose of fostering meaningful, effective and efficient oversight by Parliament, it was proposed Clause 12 be tweaked to provide for one Annual Report from the Registrar of Public Participation. In the alternative amend Clause 12 to provide that this Annual Report shall be submitted to Parliament by the Attorney-General.
21. Expand General Public Participation Guideline No. 3(2) to also include older members of the society, Kenyan diaspora, minorities and marginalized groups. We propose that it therefore reads –
"A state organ or public office shall take all necessary measures to ensure the participation of persons with disabilities, older members of the society, Kenyan diaspora, minorities and marginalized groups in the public participation process."
22. They proposed providing for a complaint handling mechanism to align with the Kenya Policy on Public Participation.

Following the deliberations, the Committee resolved that the submissions be incorporated in the draft report for consideration by the Committee.

MIN NO/DAA&GPC/PBL/2024/041: ADJOURNMENT

The meeting was adjourned at ten minutes past twelve p.m. (12.10 pm). The next meeting will be held on notice.

Signed..... Date..... 16/4/2024

Hon. Daniel Epuyo Nanok, CBS, M.P.
Chairperson

**MINUTES OF THE 9TH SITTING OF THE COMMITTEE ON PARLIAMENTARY
BROADCASTING AND LIBRARY HELD IN MEDIA CENTRE, PARLIAMENT
BUILDINGS ON TUESDAY, 27TH FEBRUARY, 2024 AT 11.00 AM.**

PRESENT

1. The Hon. (Eng.) John Kiragu Chege, M.P.- Vice Chairperson
2. The Hon. Moses Malulu Injendi, M.P.
3. The Hon. Timothy Wanyonyi Wetangula, M.P
4. The Hon. Rindikiri Mugambi Murwithania, M.P.
5. The Hon. Anthony Kenga Mupe, M.P.
6. The Hon. Charles Onchoke Mamwacha, M.P
7. The Hon. George Gachagua, M.P.

APOLOGIES

1. The Hon. Daniel Epuyo Nanok, M.P. - Chairperson
2. The Hon. Mohamed Mohamed Ali, M.P.
3. The Hon. Raphael Sauti Wanjala, M.P
4. The Hon. James Gakuya Mwangi, M.P
5. The Hon. John Waluke Koyi, M.P
6. The Hon. Oscar Kipchumba Sudi, M.P.
7. The Hon. Adams Kipsanai Korir, M.P.
8. The Hon. Abdirahman Mohamed Abdi, M.P
9. The Hon. (Dr.) John Ariko Namoit, M.P
10. The Hon. Josses Kiptoo Lelmengit, M.P.
11. The Hon. Kitilai Ole Ntutu, M.P.
12. The Hon. Phelix Odiwuor Khodhe, M.P
13. The Hon. Suzanne Ndunge Kiamba, M.P.
14. The Hon. Talib Ahmed Abubakar, M.P

IN- ATTENDANCE

SECRETARIAT

- | | |
|----------------------------|----------------------------|
| 1. Ms. Ella Kendi | Clerk Assistant I |
| 2. Ms. Fidlizah S. Mwagogo | Clerk Assistant III |
| 3. Ms. Marlene Ayiro | Principal Legal Counsel II |
| 4. Mr. Silas Korir Lomutur | Research Officer III |
| 5. Mr. Rodgers Kilungya | Audio Officer |
| 6. Mr. Jared Onyancha | Protocol Officer |
| 7. Ms. Leah Memsap | Attachee |

AGENDA

1. Preliminaries
 - i) Prayers
 - ii) Adoption of the Agenda

2. Confirmation of the Minutes of the previous sitting
3. Matters Arising
4. **Consideration of the memoranda received on Public Participation Bill, 2023.**
5. Any other Business
6. Adjournment and date of the next meeting

MIN NO/DAA&GPC/PBL/2024/031: PRELIMINARIES

The meeting was called to order at twenty-five minutes past eleven in the morning (11.25 a.m.), followed by a word of prayer and introductions thereafter. The agenda of the meeting was adopted having been proposed by Hon. Rindikiri Mugambi Murwithania, M.P. and seconded by Hon. Anthony Kenga Mupe, M.P.

MIN NO/DAA&GPC/PBL/2024/032: CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETINGS

The confirmation of minutes was deferred to the next sitting.

MIN NO/DAA&GPC/PBL/2024/033: CONSIDERATION OF THE MEMORANDA RECEIVED ON PUBLIC PARTICIPATION BILL

The Legal Counsel took the Committee through the memoranda received from various stakeholders as follows: -

Schedule paragraph 5

1. Kenya Devolution Civil Society Organizations Working Group proposed: removal of confidentiality requirements in paragraph 5 (4) (b)
2. Civil society Parliamentary Engagement Network (CSPEN) proposed as follows: the applicant fails to satisfy any access to information requirements
3. Kenya Devolution Civil Society Organizations Working Group proposed: amendment of section (5) subsection (5) to remove "nature and extent"
4. National Gender and Equality Commission (NGEC) proposed amendment of 6 (b) to read as follows: the final decision is made available to the public including the reasons for the decisions taken including the rejection of the submissions made
5. Kenya Association of Manufacturers proposed: to include a paragraph that mandates state organs or public offices to provide written feedback to the persons or companies that submitted written memoranda
6. Dr. M.J. Okumu proposed: registration of Bunge la wananchi
7. Caucus on Disability Rights Advocacy and the United Disabled Persons of Kenya proposed amendments as follows: "the final decision is made available to the public in the most accessible formats, including the reasons for the decisions taken".

Schedule section 6

8. Caucus on Disability Rights Advocacy and the United Disabled Persons of Kenya proposed: amendment as follows; "the disclosure of all relevant information including all the proposals submitted are or considered"
9. Civil society Parliamentary Engagement Network (CSPEN) proposed insertion of the following clause: (d) transfer of applications to another public entity, if the information requested is held by that other public entity

10. Civil society Parliamentary Engagement Network (CSPEN) proposed: that the clause should clearly outline who the clients are
11. Kiambu Joint CSOs proposed: amendment to paragraph 7 (c) as follows; "the state organ or public body shall not engage in conduct involving dishonesty, fraud, deceit, misrepresentation or discrimination.

Schedule Paragraph 8

12. Kenya Devolution Civil Society Organizations Working Group proposed: deletion of the terms "nature and extent"
13. Civil Society Parliamentary Network (CSPEN) proposed: that guideline should be amended to specify what constitutes disruptive behavior and what should happen if a public official causes it
14. Centre for Economic Governance proposed: grievances/ complaints redress mechanisms or make reference to any law on petition; a state organ or public body shall provide a complaints redress mechanism that ensures; timely and comprehensive redress of the problems identified by the public throughout the public participation processes, all complaints are comprehensively reported and well documented and a mutually agreeable resolution to both parties and provide alternative resolution mechanisms in case one party disagrees with the proposed resolution
15. NGECE proposed: amendment by inserting a new miscellaneous part V- Clause 15 on County Legislation as follows; a county government shall enact county specific legislation generally for the better carrying out of the purposes and provisions of this Act
16. Strathmore Centre for Intellectual Property And Technology Law proposed a section on guiding principles be added as follows: that public views shall be taken into consideration in decision making process, that all persons and institutions to be affected by a decision shall have a right to be consulted and involved in the decision making process, provision of effective mechanisms for the involvement of the public communities and organizations that would be affected by or be interested in a decision, participants equitable access to the information they need to participate in a meaningful manner, promotion of sustainable decisions recognizing the needs and interests of all participants including decision makers, development of appropriate feedback mechanism and adherence to privacy and data protection principles in public participation and adherence to the national values under Article 10 of the constitution
17. Kenya Association of Manufacturers proposed: insertion of a new clause on dispute resolution
18. Kenya Devolution Civil Society Organizations Working Group proposed: that the bill does not have redress mechanism and recommend a whole section to be included
19. Civil Society Parliamentary Engagement Network (CSPEN) proposed: alignment of existing public participation legislation. The regulations should provide adequate mechanisms to align the existing laws and policies to the overarching framework provided by the bill
20. Kenya Devolution Civil Society Organizations Working Group proposed that: the bill is very weak on feedback and recommend a whole section to be included, a whole part of the bill to include civic education and budget allocation on it. The bill still lacks the following key issues: lack of minimum standards as to what comprises adequate effective and meaningful participation especially at the community level,

inadequate framework for ensuring the effective participation and involvement of the marginalized vulnerable and minority groups in county governance and development, inadequate safeguards of public interest in public participation processes and inadequate complaint handling reporting and feedback mechanisms

21. Coast Civil Society Network for Human Rights proposed general recommendations as follows: enhance access to information; while the bill recognizes the right to request information, it should establish strict timelines for responding to requests and should minimize the discretion of state organs to withhold information. Additionally, it should ensure that the information is provided in a format accessible to all including those with disabilities or those who may not be proficient in the national language. Diversity and inclusion; there should be explicit requirements in the bill to ensure that public participation processes are accessible and inclusive. This includes providing interpreters for participants who are not proficient in the national language and sign interpreters for people with disabilities to accommodate all the groups in the community. Guidelines should also be developed to ensure representation from marginalized groups. Feedback Mechanism; it would be beneficial for the bill to include a phrase that allows the public entity to provide feedback on the public participation process on what has been adopted and what has not yet. This feedback is valuable, for making the government accountable to its citizens and encouraging the people to participate in public participation
22. Kenya Law Reform Commission proposed: The bill may offend the doctrine of separation of powers- Cabinet Secretary is given the power to make "regulations" for any other matter required to be prescribed under this Act. The bill is anticipated to apply across the three arms of government, if enacted there may be a compromise on accountability. The relationship between the responsible authority and state organ or public office is vague, is it possible to identify an independent existence institution that can be vested with the function to monitor and access public participation within the Executive?, KLRC plays a very central role in public participation exercise by institutions and provided measurable technical support to institutions during public participation exercise. The AG may delegate this function to KLRC, a central institution that monitors public participation may change the perception that it is an exercise in futility and some conflictual provisions noted with Statutory Instruments Act need clarity
23. Attorney General proposed: inclusion clause on dispute resolution; harmonize provisions of Bill with Kenya Public Participation Policy specifically the coordinating mechanism for MDAs, county governments and non-state actors in facilitating effective public participation and a monitoring and evaluation framework to determine the effectiveness of the public participation process. The approach adopted by the office of the Prime Cabinet Secretary was establishment of Office of Registrar of Public Participation who develops and coordinates the regulatory framework for public participation
24. Dr. M. J. Okumu proposed: what is sufficient participation or consultation or meaningful; propose budget at 1% of National Level and 3% to 5% at county levels
25. International Budget Partnership Kenya proposed: right to public participation as follows; provision 7 (1) of part II that any member of the public or entity likely to be affected by a decision should have the right to participate in the decision- making process gives life to the principles of public participation found in Article 1, 10, 35, 69, 118, 174 184, 196 201 and 232 of the Constitution of Kenya.

Lack of definition of meaningful participation; the bill does not provide guidance on what constitutes a meaningful public participation opportunity and therefore propose some considerations for meaningful participation: Access to information; the availability and comprehensiveness of timely information relevant to the decision at hand. This should include a minimum threshold of what constitutes timely access to information; Decision at hand: clear communication of the agenda of public participation with details of who is affected by the decision, what information the public should refer to in their preparation; Inclusivity: the need for inclusive and effective representation members of the public likely to be affected by the decision; Facilitation of public participation: Government officials who facilitate public deliberation should be well versed with the subject matter to support an informed dialogue between citizen and their government and feedback: feedback refers to what happens after public deliberations. The mechanisms through which the public will be informed of their inputs on the decision-making process and the decision itself.

Aligning of already existing public participation legislation and policy with the proposed national bill e.g. EMC, Nairobi Counties: since the onset of devolution, different public bodies have overtime, developed their own legislations and policy on public participation. The current bill does not seem to provide an idea of what will happen with these existing pieces of legislation.

Strengthening of requirement on reporting of public Participation (Provision 12, 6, of Guidelines): the public should also have access to these reports. Therefore, there should be an explicit requirement to publish and publicize the reports. The information to be included in these reports should include all input received during public participation engagements, how these responses were analyzed, who attended the engagement, the final outcome and the reason for the outcome. Creation of mechanisms to enable timely access to information: Provision 2, 4, 5 and 6 of the general guidelines are key to ensuring fair and timely access to information before and after public participation engagements. Further recommend that the regulations include the provision on the appointing of and access to information officer in all state bodies as a port of call for information request provided for in Provision 7 (2) of the Access Information Act.

Committee Observations and resolutions

Following the deliberations, the Committee agreed to the proposal on inclusion of a clause on grievances/ complaints redress mechanisms to ensure timely and comprehensive redress of the problems identified by the public throughout the public participation processes.

Further, the Committee disagreed with the following proposals from the stakeholders

- a) The proposal on registration of Bunge la wananchi as the social movement was not formally recognized in the Constitution
- b) The proposal to include a paragraph that mandates state organs or public offices to provide written feedback to the persons or companies that submitted written memoranda. The Committee stated implementation of the proposal would be time consuming and would require financial resources.

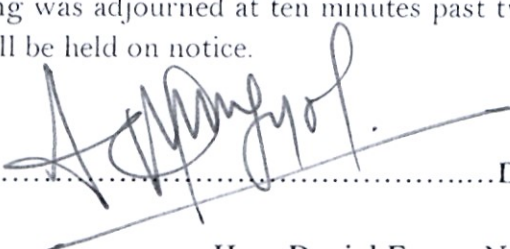
MIN NO/DAA&GPC/PBL/2024/034: ANY OTHER BUSINESS

Public Hearings on the Public Participation Bill, 2023: The Committee is scheduled to have a meeting with the Principal Secretary, State Department Parliamentary Affairs to consider their memoranda on Public Participation Bill, 2023 on Tuesday, March 12th 2024 from 10.30am and therefore the Members were urged to avail themselves for the meeting.

MIN NO/DAA&GPC/PBL/2024/035: ADJOURNMENT

The meeting was adjourned at ten minutes past twelve in the afternoon. (12.10 pm). The next meeting will be held on notice.

Signed.....Date.....


Hon. Daniel Epuyo Nanok, CBS, M.P.
Chairperson

**MINUTES OF THE 8TH SITTING OF THE COMMITTEE ON PARLIAMENTARY
BROADCASTING AND LIBRARY HELD IN MEDIA CENTRE, PARLIAMENT
BUILDINGS ON TUESDAY, 27TH FEBRUARY, 2024 AT 10.00 AM.**

PRESENT

1. The Hon. (Eng.) John Kiragu Chege, M.P.- Vice Chairperson
2. The Hon. Moses Malulu Injendi, M.P.
3. The Hon. Timothy Wanyonyi Wetangula, M.P
4. The Hon. Rindikiri Mugambi Murwithania, M.P.
5. The Hon. Anthony Kenga Mupe, M.P.
6. The Hon. Charles Onchoke Mamwacha, M.P
7. The Hon. George Gachagua, M.P.

APOLOGIES

1. The Hon. Daniel Epuyo Nanok, M.P. - Chairperson
2. The Hon. Mohamed Mohamed Ali, M.P.
3. The Hon. Raphael Sauti Wanjala, M.P
4. The Hon. James Gakuya Mwangi, M.P
5. The Hon. John Waluke Koyi, M.P
6. The Hon. Oscar Kipchumba Sudi, M.P.
7. The Hon. Adams Kipsanai Korir, M.P.
8. The Hon. Abdirahman Mohamed Abdi, M.P
9. The Hon. (Dr.) John Ariko Namoit, M.P
10. The Hon. Josses Kiptoo Lelmengit, M.P.
11. The Hon. Kitilai Ole Ntutu, M.P.
12. The Hon. Phelix Odiwuor Khodhe, M.P
13. The Hon. Suzanne Ndunge Kiamba, M.P.
14. The Hon. Talib Ahmed Abubakar, M.P

IN- ATTENDANCE

SECRETARIAT

- | | |
|----------------------------|----------------------------|
| 1. Ms. Ella Kendi | Clerk Assistant I |
| 2. Ms. Fidlizah S. Mwagogo | Clerk Assistant III |
| 3. Ms. Marlene Ayiro | Principal Legal Counsel II |
| 4. Mr. Silas Korir Lomutur | Research Officer III |
| 5. Mr. Rodgers Kilungya | Audio Officer |
| 6. Mr. Jared Onyancha | Protocol Officer |
| 7. Ms. Leah Memsap | Attachee |

AGENDA

1. Preliminaries
 - i) Prayers
 - ii) Adoption of the Agenda
2. Confirmation of the Minutes of the previous sitting

3. Matters Arising
4. **Consideration of the memoranda received on Public Participation Bill, 2023.**
5. Any other Business
6. Adjournment and date of the next meeting

MIN NO/DAA&GPC/PBL/2024/027: PRELIMINARIES

The meeting was called to order at fifteen minutes past ten in the morning (10.15 a.m.), followed by a word of prayer and introductions thereafter. The agenda of the meeting was adopted having been proposed by Hon. Rindikiri Mugambi Murwithania, M.P. and seconded by Hon. Anthony Kenga Mupe, M.P.

MIN NO/DAA&GPC/PBL/2024/028: CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETINGS

The confirmation of minutes was deferred to the next sitting.

MIN NO/DAA&GPC/PBL/2024/029: CONSIDERATION OF THE MEMORANDA RECEIVED ON PUBLIC PARTICIPATION BILL

The Legal Counsel took the Committee through the memoranda received from various stakeholders as follows: -

Schedule section 1 and 2

1. Centre for Economic Governance (CEG) proposed: amendment of section 1 (b) to remove the words "urgency of the matter"
2. Kenya Law Reform Commission proposed: deletion of sub clause c,d,e,f and g
3. Caucus on Disability Rights Advocacy and the United Disabled Persons of Kenya proposed: to amend section 1 (i) to read as follows; the ability of the targeted participants to access the necessary information including in accessible formats and the venue
4. Council of Governors proposed: Schedule 1 in determining what is meaningful and important, the authority shall take into consideration; clarity of the subject matter, structure and process for public participation, access to information, commitment to the process, inclusive and effective representation, a belief in the value of public input, ability to engage and standing of the participants and demonstration of transparency in the process
5. Civil society Parliamentary Engagement Network (CSPEN) proposed: insertion of a new clause on guiding principles- reasonable accommodations that persons with disabilities may require to participate meaningfully, including qualified sign language interpreters, physically accessible infrastructures and documents provided in braille/ large print
6. Caucus on Disability Rights Advocacy and the United Disabled Persons of Kenya and Strathmore Centre for Intellectual Property and Technology Law proposed:

- provision of a definite time for the notice to be given "A state organ or public office shall give the public 14 days' notice to make input on the issue"
7. The National treasury and Economic Planning proposed: in 2(1) deletion of the words "adequate notice" and replace with at least 21 days' notice
 8. We Care Community Based Organization proposed: "A state organ or public office shall give the public 21 days' notice to make input on the issue"
 9. Civil Society Parliamentary Engagement Network (CSPEN) proposed as follows: "A state organ or public office shall give the public 21 days' notice to make input on the issue", insertion of social media platforms under (2) (a) as a place for publication and distribution of notices and the introduction of sub clause (3) (b) does not prevent other interested parties from engaging in the public participation process
 10. Kenya Association of Manufactures proposed: amendments as follows; 2 a state organ or public not less than 45 days to make their input on the issue
 11. Dr. M.J. Okumu proposed: that notice should be at least 14 days but 21 days is better
 12. Caucus on Disability Rights Advocacy and the United Disabled Persons of Kenya proposed: amendment of section 2 (c) of the bill by insertion of the words that are adherent to KS 2952- accessibility - ICT Products And Services by the Kenya Bureau of Standards immediately after the word website
 13. The National treasury and Economic Planning proposed: in 2 (2) add " social media handles so as to be able to reach the youth
 14. Centre for Economic Governance proposed: add a new article (f) on feedback as follows; a public participation program under subparagraph (1) shall clearly identify "feedback mechanisms to the public on the decisions made"
 15. Kenya Devolution Civil Society Organizations Working Group proposed: section (2) subsection (3) (d) include also virtual option
 16. National Gender and Equality Commission (NGEC) proposed: amendment of paragraph 2 by insertion of the following additional items under notice requirements; religious gatherings, notice boards, social media and markets
 17. Dr. M.J. Okumu proposed: that at least 3 radio stations, include churches, chamas, youth groups, women groups and PWDs
 18. National Gender and Equality Commission (NGEC) proposed: amendment of paragraph (2) to read as follows "a state organ or public office shall take all necessary measures to ensure the participation of persons with disabilities and all various categories of vulnerabilities in the public participation processes"
 19. Amendment of paragraph (3) to read as follows; where the targeted participants are not conversant in the national languages and sign language, the state organ or public office shall provide an interpreter for those participants who wish to make their remarks in their local language and (c) amend paragraph 3 by insertion of the following additional sub-paragraph 4 as follows: (4) the state organ or public office shall take measures to ensure the venue, the infrastructure and build environment is accessible
 20. Caucus on Disability Rights Advocacy and the United Disabled Persons of Kenya proposed: a state organ or public office shall take all necessary measures to ensure the meaningful and effective participation of persons with disabilities in the public participation processes.

Schedule Section 3

21. National Gender and Equality Commission (NGEC) proposed: amendment of paragraph 4 to specify the timelines for notice as ten days. Further, amendment by renumbering the provision as (1) and then insert a new sub-paragraph (2) as follows; the state organ or public office shall ensure that there are no more than two matters at any given time requiring the public to participate.

Schedule Paragraph 4

22. Dr. M.J. Okumu proposed that WhatsApp groups registered with the county department of public participation
23. Caucus on Disability Rights Advocacy and the United Disabled Persons of Kenya and Strathmore Centre for Intellectual Property and Technology Law proposed: that a state organ or public office shall give the public 14 days' notice to make input on the issue
24. Kenya Law Reform Commission proposed: amendment of the bill by deletion of paragraph (4) of the schedule.

Schedule Paragraph 5

25. The National Treasury and Economic Planning proposed: amendment to include social media
26. National Gender and Equality Commission (NGEC) proposed: amendment of paragraph 5 (1) (a) as follows: publish and distribute the documents for consideration as widely as possible using the available means including providing hard copies, radio and television, advertisements, websites or community radio announcements and if necessary educate and sensitize the public on the subject matter of public participation
27. Civil Society Parliamentary Engagement Network (CSPEN) proposed of 1 (a) to read; publish and distribute the documents for consideration as widely as possible using the available means, including providing hard copies, radio and television advertisements, websites or community radio announcements at least 14 days before the deadline for submission of feedback
28. Civil Society Parliamentary Engagement Network proposed: amendment of the provision to include social media platforms under (1) (a) as a place for publication and distribution of documents for consideration
29. Dr. M.J. Okumu proposed: roadshows to circulate the summary documents particularly on budget in local vernacular language in advance for citizens to participate
30. Caucus on Disability Rights Advocacy and the United Disabled Persons of Kenya proposed: ensuring that the documents are published and distributed in a language and form that can be used by the public as well as Kenyan Sign Language, Braille electronic and other alternative and augmentative communication methods
31. We Care Community Based Organization proposed: that the documents and websites/ digital platforms should be disability friendly i.e have braille features and availability of sign language interpreters among other means that will be deemed necessary. The bill be amended by inserting the following subparagraph in paragraph (5) of the schedule- (c) ensure that the documents distributed are easily accessible by persons with special needs

32. We care Community Based Organization proposed: insertion of Section 5 (1) (d) that shall mandate state organs and public offices to conduct civic education, awareness and public sensitization on the issues to be discussed before members of the public give their views
33. Caucus on Disability Rights Advocacy and the United Disabled Persons of Kenya proposed: deletion of section 5 (3) (b)
34. Kenya Climate Change Working Group proposed: that the costs be incurred by the authority and not the public
35. Kenya Devolution Civil Society Organizations Working Group proposed: that there should be no charge for public information
36. Civil Society Parliamentary Engagement Network proposed: amendment of 5 (3) (c) to read; this may be subject to information disclosure limitations under the access to information Act
37. Kenya Devolution Civil Society Organizations Working Group proposed: that there should be no confidentiality for public information unless its security information which is protected by law
38. Kenya Devolution Civil Society Organizations Working Group proposed: that paragraph 5 (4) (a) of the Bill be deleted.

Committee Observations and resolutions

Following the deliberations, the Committee agreed to the following proposals from the stakeholders; -

- a) That public participation materials be accessible in formats such as braille and venues should also be accessible for persons with disabilities;
- b) To adopt inclusivity for persons with disabilities.
- c) That websites used for the publication of public participation notices be accessible to persons with disabilities.
- d) Adoption of other forms of communication particularly for persons with various disabilities.

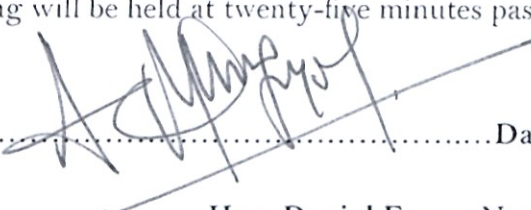
Following the deliberations on the memoranda the Committee disagreed with the following proposals from the stakeholders

1. The proposal to delete the word "urgency" under factors to be considered citing that it's upon the state organ to determine what matter qualifies to be urgent
2. The proposal to specify the number of days for the notice would be restrictive/prohibitive
3. Proposal for inclusion of airing the public participation activity in three radio stations and chamas was disagreed with as the current provisions in the bill were adequate.
4. Education and sensitization will require financial resources including education experts.

5. The proposal that costs be incurred by the authority and not the public was disagreed with due to limited financial resources
6. To the proposal that there should be no confidentiality for public information stating that every government has information that is confidential

MIN NO/DAA&GPC/PBL/2024/030: ADJOURNMENT

The meeting was adjourned at twenty minutes past eleven in the morning. (11.20 am). The next meeting will be held at twenty-five minutes past eleven (11.25am).

Signed..........Date.....

Hon. Daniel Epuyo Nanok, CBS, M.P.
Chairperson

MINUTES OF THE 7TH SITTING OF THE COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY HELD IN PAVILLION CONFERENCE ROOM HILTON GARDEN INN HOTEL, MACHAKOS COUNTY ON SATURDAY, 24TH FEBRUARY, 2024 AT 2.00 PM.

PRESENT

1. The Hon. Daniel Epuyo Nanok, M.P. - Chairperson
2. The Hon. (Eng.) John Kiragu Chege, M.P.- Vice Chairperson
3. The Hon. Moses Malulu Injendi, M.P.
4. The Hon. Charles Onchoke Mamwacha, M.P.
5. The Hon. George Gachagua, M.P.
6. The Hon. John Waluke Koyi, M.P.
7. The Hon. (Dr.) John Ariko Namoit, M.P.
8. The Hon. Rindikiri Mugambi Murwithania, M.P.
9. The Hon. Anthony Kenga Mupe, M.P.
10. The Hon. Abdirahman Mohamed Abdi, M.P.
11. The Hon. Phelix Odiwuor Khodhe, M.P.
12. The Hon. Talib Ahmed Abubakar, M.P

APOLOGIES

1. The Hon. Mohamed Mohamed Ali, M.P.
2. The Hon. Raphael Sauti Wanjala,
3. The Hon. James Gakuya Mwangi, M.P
4. The Hon. Timothy Wanyonyi Wetangula, M.P.
5. The Hon. Oscar Kipchumba Sudi, M.P.
6. The Hon. Adams Kipsanai Korir, M.P.
7. The Hon. Josses Kiptoo Lelmegit, M.P.
8. The Hon. Kitilai Ole Ntutu, M.P.
9. The Hon. Suzanne Ndunge Kiamba, M.P.

IN- ATTENDANCE

SECRETARIAT

- | | |
|----------------------------|----------------------------|
| 1. Ms. Lucy Kimathi | Principal Clerk I |
| 2. Ms. Ella Kendi | Clerk Assistant I |
| 3. Ms. Fidlizah S. Mwagogo | Clerk Assistant III |
| 4. Ms. Marlene Ayiro | Principal Legal Counsel II |
| 5. Ms. Deborah Mupusi | Media Relations II |
| 6. Mr. Silas Korir Lomutur | Research Officer III |
| 7. Mr. Meldrick Sakani | Audio Assistant |
| 8. Mr. Stanley Lagat | Serjeant- At- Arms |
| 9. Ms. Juliet Minayo | Office Assistant |
| 10. Ms. Leah Memsap | Attachee |

MIN NO/DAA&GPC/PBL/2024/024: PRELIMINARIES

The meeting was called to order at thirty minutes past two in the afternoon (2.30 p.m.).

**MINNO/DAA&GPC/PBL/2024/025: CONSIDERATION OF THE MEMORANDA
RECEIVED ON THE PUBLIC
PARTICIPATION BILL, 2023**

The Legal Counsel, took the Committee through the memoranda received from the stakeholders as follows:-

Clause 12

1. Kenya Association of Manufacturers proposed: amendment of sub clause (4) to read; Reports of public participation shall be mandatorily published on the official website of the relevant institution and concurrently disseminated in hard copy format to all stakeholders and interested parties
2. Civil Society Parliamentary Engagement Network proposed: that sub clause (4) should be amended to include;
 - (a) Summary of the number and nature of public participation sessions held
 - (b) The immediate output of and outcomes from public involvement and
 - (c) An update on the future steps or progress of the matters under considerationFurther, a sub clause should be introduced to note that the annual reports should be made public for access to the public through the official websites of Parliament, relevant institutions and any other relevant channel of communication
3. Kiambu Joint CSOs proposed insertion of a new clause on: description of financial implications, number and description of matters subjected to public participation and civic education, reporting of disaggregated data on attendance on public participation and reporting of the public participation reports filed
4. Kenya Law Reform Commission proposed: amendment of the sub clause to include information on: a brief on the activity that necessitated the public participation, the budget, list of persons or entities likely affected, mode/ methodology of public participation, proof of notice and comments received and how they were dealt with
5. Caucus on Disability Rights Advocacy and the United Disabled Persons of Kenya proposed: 12 (b) disaggregated data of the number of special interest groups in particular, persons with disabilities who participated in the public participation forums
6. Centre for Economic Governance proposed: (b) information on the processes and the achievements of the public participation including number of forums and the outcomes
7. We Care Community Based Organization proposed insertion of: (b) details of the level of inclusivity in the public participation process giving priority to people with disabilities, the marginalized vulnerable and majority groups, (b) the views considered from members of the public and the feedback given to the citizens to guide implementation and evaluation of the public participation processes

8. Kenya Climate Change Working Group proposed: (b) the report to indicate how public participation was conducted and how it was inclusive and effective
9. The Attorney General proposed: the bill be amended on the section for annual reports, by inserting a new paragraph immediately after paragraph (a) information on; how the public is informed about opportunities to participate with respect to public participation, public participation budget and disaggregated participation data and modalities of public participation engagement.

Clause 13

10. Caucus on Disability Rights Advocacy and the United Disabled Persons of Kenya proposed: to amend to remove the words "no" "fine" appearing immediately after the word "fine"
11. The bill be amended in clause 13 by deleting the words "no fine" appearing immediately after the words "liable to a fine"
12. We Care Community Based Organization amended as follows: any person who contravenes any provision of this Act if convicted be liable to a fine not exceeding five million shillings or imprisonment for a term not exceeding two years or both
13. Civil Society Parliamentary Engagement Network proposed: to amend the provision to provide for specific offences and penalties
14. Kiambu Joint CSOs proposed: amendment of the clause to include the offences
15. Kenya Association of Manufacturers proposed amendment as follows: a person who contravenes a provision of the Act commits an offence and shall upon conviction be liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding six months or both
16. Dr M. J. Okumu proposed: a minimum fine of 1 million
17. Attorney General proposed: The Attorney General shall, in consultation with institutions mandated to handle public complaints, promote alternative dispute resolution methods in the resolution of complaints relating to public participation
18. Attorney General proposed: that there is established an office to be known as the office of the Registrar of the Public Participation , (hereinafter referred to as the "Office") (1) the functions of the office shall be to; develop and co-ordinate the regulatory framework for public participation, monitor compliance with established public participation standards, provide expert advice and to government agencies and civil societies on effective public participation practices and issue public reports on compliance issues highlighting identifies strength and weaknesses in public participation processes

Clause 14

19. Kenya Law Reform Commission proposed: deletion of the word "regulation" and Replace with "a statutory instrument"
20. Kenya Climate Change Working Group proposed: deletion of this provision on grounds that this may bring about conflict of interest
21. Council of Governors proposed: The Cabinet Secretary, in consultation with County Governments may make regulations for the better carrying out of the provisions of this Act
22. Kenya Law Reform Commission proposed: deletion of section 14 (2) (b)

Committee observations and resolutions

Following the deliberations, the Committee agreed to the following proposals from the stakeholders; -

1. That the summary on a public participation activity should include number of sessions held, output and outcome of the process for all matters under consideration.
2. Adopt the proposal on inclusivity.
3. To correct a typographical error in clause 13
4. Adopt to provide mechanisms for dispute resolution that are missing in the Act
5. Attorney General should be tasked to establish an office to be known as Office of Registrar of public participation

Following the deliberations, the Committee disagreed to the following proposals from the stakeholders; -

1. The proposal on clause 12 to include brief of the activity, budget, mode and methodology would be difficult to implement
2. The proposed fines as they were punitive
3. The proposal to replace the word "regulation" with "statutory instrument" as the word regulation is commonly used in drafting of laws

MIN NO/DAA&GPC/PBL/2024/026: ADJOURNMENT

The meeting was adjourned at thirty minutes past three in the afternoon. (3.30 pm). The next meeting will be held on notice.

Signed.....Date.....

Hon. Daniel Epuyo Nanok, CBS, M.P.
Chairperson

**MINUTES OF THE 6TH SITTING OF THE COMMITTEE ON PARLIAMENTARY
BROADCASTING AND LIBRARY HELD IN PAVILLION CONFERENCE ROOM,
HILTON GARDEN INN HOTEL, MACHAKOS COUNTY ON SATURDAY, 24TH
FEBRUARY, 2024 AT 10.00 AM.**

PRESENT

1. The Hon. Daniel Epuyo Nanok, M.P. - **Chairperson**
2. The Hon. (Eng.) John Kiragu Chege, M.P.- **Vice Chairperson**
3. The Hon. Moses Malulu Injendi, M.P.
4. The Hon. Charles Onchoke Mamwacha, M.P.
5. The Hon. George Gachagua, M.P.
6. The Hon. John Waluke Koyi, M.P.
7. The Hon. (Dr.) John Ariko Namoit, M.P.
8. The Hon. Rindikiri Mugambi Murwithania, M.P.
9. The Hon. Anthony Kenga Mupe, M.P.
10. The Hon. Abdirahman Mohamed Abdi, M.P.
11. The Hon. Phelix Odiwuor Khodhe, M.P.
12. The Hon. Talib Ahmed Abubakar, M.P

APOLOGIES

1. The Hon. Mohamed Mohamed Ali, M.P.
2. The Hon. Raphael Sauti Wanjala,
3. The Hon. James Gakuya Mwangi, M.P
4. The Hon. Timothy Wanyonyi Wetangula, M.P.
5. The Hon. Oscar Kipchumba Sudi, M.P.
6. The Hon. Adams Kipsanai Korir, M.P.
7. The Hon. Josses Kiptoo Lelmegit, M.P.
8. The Hon. Kitilai Ole Ntutu, M.P.
9. The Hon. Suzanne Ndunge Kiamba, M.P.

IN- ATTENDANCE

SECRETARIAT

- | | |
|----------------------------|----------------------------|
| 1. Ms. Lucy Kimathi | Principal Clerk I |
| 2. Ms. Ella Kendi | Clerk Assistant I |
| 3. Ms. Fidlizah S. Mwagogo | Clerk Assistant III |
| 4. Ms. Marlene Ayiro | Principal Legal Counsel II |
| 5. Ms. Deborah Mupusi | Media Relations II |
| 6. Mr. Silas Korir Lomutur | Research Officer III |
| 7. Mr. Stanley Lagat | Serjeant- At- Arms |
| 8. Ms. Juliet Minayo | Office Assistant |
| 9. Ms. Leah Memsap | Attachee |

MIN NO/DAA&GPC/PBL/2024/021: PRELIMINARIES

The meeting was called to order at fifteen minutes past ten in the morning (10.15 a.m.).

MIN NO/DAA&GPC/PBL/2024/022: **CONSIDERATION OF THE
MEMORANDA RECEIVED ON
PUBLIC PARTICIPATION BILL, 2023**

The Legal Counsel took the Committee through the memoranda received on the bill from various stakeholders as follows;

Clause 6

1. Caucus on Disability Rights Advocacy and the United Disabled Persons of Kenya proposed: the bill be amended by inserting the words “procedural accommodation” in clause 6 (1) to read as follows; a state organ or public office shall provide reasonable procedural accommodation and meaningful opportunities for public participation
2. Kenya Association of Manufacturers proposed: addition of the following clauses: on what the state needs to consider when determining what is reasonable in section 6(2)
 - (f) Community engagements based on the relevance and interest of the subject matter to the public
 - (g) Timeliness and notification standards for providing adequate notice to the public
 - (h) Feedback mechanisms, feedback collection to assess the effectiveness of the participation process and
 - (i) Accessibility measures to ensure provisions for accommodating diverse needs.
3. The National Treasury and Economic Planning proposed: that the word meaningful should be defined to provide a threshold.
4. Kenya Law Reform Commission proposed: to amend clause 6 (2) by inserting the word “office” immediately after the word “public”
5. Kenya Law Reform Commission proposed: deletion of the word “decision” and consider using a more specific term that aligns with the scope of public participation
6. Caucus on Disability Rights Advocacy and the United Disabled Persons of Kenya (UDPK) proposed: need for inclusive and effective representation including the recognition of the need for reasonable accommodation
7. Kiambu Joint CSOs proposed: inclusion of the word “accountability” to the list provided in clause 6 (2) (e)
8. Kenya Devolution Civil Society Organizations Working Group proposed: inclusion of a section on;
 - (f) Interest and relevance of stakeholders
9. The National Treasury proposed: that the word “meaningful” should be defined to provide a threshold
10. Civil Society Parliamentary Engagement Network (CSPEN) proposed: insertion of a new sub clause (3) to provide for components of meaningful public participation to include;
 - (a) Clarity of the subject matter for the public to understand
 - (b) Structures and processes (medium of engagement) of participation that are clear and simple

- (c) Opportunity for balanced influence from the public in general
 - (d) Commitment to the process
 - (e) Capacity to engage on the part of the public including that the public must first be sensitized on the subject matter and
 - (f) Feedback on the input given, eventual outcome and how input influenced the outcome of public participation.
11. Joint Kiambu CSOs proposed: an amendment to introduce a clause on sovereignty of the people
 12. Strathmore Centre for Intellectual Property and Technology Law proposed: the section to provide for factors to consider in determining "meaningful opportunities for public participation".

The Committee agreed with the following proposals made by the stakeholders;

- a) The proposal that seeks to cater for the needs of persons with special needs.
- b) The proposal in 6 (2) (g), that there is need to include timelines and notification standards.
- c) A threshold for the word "meaningful" to be provided since it will minimize ambiguity and provide clarity of what a meaningful opportunity is.
- d) To the amendment of clause 6 (2) which will correct a grammatical error in the Act
- e) Insertion of a word that will encompass the word decision in clause 6.
- f) Inclusion of the word "accountability" in clause 6 for the purposes of assigning responsibility.

Clause 7

13. Kenya Law Reform Commission proposed: to amend clause 7 to read as follows; where a member of the public or an entity elects to attend a public participation exercise, the member of public or entity has the right to;
 - (a) Make presentations orally or by way of written submissions to a state organ or public office on the subject matter as may be determined.
14. Kenya Association of Manufacturers proposed: addition of sub clause (4) the responsible authority shall institute measures to prevent undue influence, coercion or manipulation of participants during public participation
15. Caucus on Disability Rights Advocacy and the United Disabled Persons of Kenya (UDPK) proposed: to amend clause 7 (2) (b) as follows; attend a public participation forum and make the presentation either orally, by way of written submission, by Kenyan sign language or any other augmentative and alternative forms of communication to a state organ or public office on the subject matter as may be determined
16. We care Community Based Organization proposed: insertion of a new clause 7 (2) (d) as follows; a member of the public taking part in the decision making process should be given feedback on the extent to which their submissions or views have been considered or reasons for not being considered in giving effect to Article 35 (1) (a) of the Constitution
17. Kiambu Joint CSOs proposed: insertion of a new clause 7 (2) (d) as follows; a member of the public has a right to receive timely and sufficient information prior to the public participation at least two weeks before the public participation forum

18. Civil Society Parliamentary Network (CSPEN) proposed: insertion of the following additional rights under sub-clause (2);
 - (a) Making presentations without influence or interruptions by a state or public officer
 - (b) Members of the public should also not face any sanctions for attending and making submissions during public participation forums and
 - (c) The public should also be accorded adequate and reasonable time to make presentations.
19. Civil Society Parliamentary Engagement Network (CSPEN) proposed: insertion of the obligations of state organs and / or public officers in conducting public participation such as establishment of proper structures for meaningful public participation and the establishment of a monitoring and evaluation framework, further, input by public or state officers should be limited to giving instructions and / or making clarifications on issues raised on the matter under consideration, lastly, the amendment of sub-clause 2 (b) to include that members of the public can also make submissions through Kenyan Sign Language administered by qualified sign language professionals
20. Kenya Devolution Civil Society Organizations Working Group proposed: new insertion as follows; a member of the public to be affected by the decision can be consulted/ appear virtually, provision of adequate time to make submissions and presentations, the public or entities should make presentations without state or public office interference and without any sanctions from the state or public office or political interference.
21. Dr. M.J. Okumu proposed: 2-3 minutes to be adequate per person. In the case of an expert, time can be extended.

The Committee agreed with the following proposals made by the stakeholders;

- a) The right to participate in public participation should not be mandatory.
- b) The proposal providing for a safeguarding of public participation from discriminatory, undue influence or manipulation by ensuring fair and unbiased engagement.
- c) Inclusion of virtual means of communications for purposes of Kenyans in diaspora.

The Committee disagreed with the following proposals

- a) Insertion of a new clause 7 (2) (d) since it would be difficult to implement modalities of feedback mechanisms due to budget constraints.
- b) The proposal of 2-3 minutes is prescriptive.

Clause 8

22. Civil Society Parliamentary Engagement Network (CSPEN) proposed: insertion of sub-clause (8) to highlight that the stated responsible authorities hold the power to

delegate the performance of the duties within the Act to an officer with that specific scope

23. Kiambu Joint CSOs proposed: establishment of an independent body to manage public participation
 24. National Treasury and Economic Planning proposed; that there is a need to include accounting officers of the different agencies and parastatals in government to be responsible authorities
 25. Kenya Law Reform Commission proposed: deletion of 8 (1), deletion of the words "Cabinet Secretaries" and replace with the words "a Cabinet Secretary
 26. Kenya Association of Manufacturers proposed: that this clause be amended to designate the specific roles, responsibilities and collaboration mechanisms between responsible authorities
 27. Kenya Devolution Civil Society Organizations Working Group proposed: to add the authority of County Assemblies in clause 8 (2), to substitute Cabinet Secretaries with Permanent Secretaries in clause 8 (5), the government department to be responsible for implementation of the law should be Public Service Commission and not Ministry of Justice, whereby the law custodian is the Attorney General.
- a) The Committee agreed with the proposal to correct the typographical error on the word "Cabinet Secretaries" to "Cabinet Secretary".
 - b) The Committee disagreed with the proposal on Clause 8(6) provides that the County Assembly Committee responsible for rules and procedure shall be the responsible authority for the county assemblies.

Clause 9

28. Kenya Association of Manufacturers proposed: to amend the clause as follows; (2) the guidelines developed by a responsible authority under subsection (1) shall include the requirements set out in the general guidelines for public participation in the in the schedule and shall;
 - (a) Include specific requirements beyond what is required under the general guidelines for public participation under the schedule and
 - (b) Provide for the manner in which any requirements of the specific or general guidelines may be satisfied.
29. Attorney General proposed: redrafting of clause 9 to be amended to provide for responsible authorities to develop operational or administrative guidelines
30. Dr. M.J. Okumu proposed: inclusion of a time frame within which to have such in place which is six months
31. Caucus on Disability Rights Advocacy and the United Disabled Persons of Kenya (UDPK) proposed a new sub clause 2 (c) provide specific guidelines on the participation of persons with disabilities in accessible means of communication including Braille, sign language or other appropriate means of communication
32. The National Treasury and Economic Planning proposed: introduction of sub clause 9 (4) that provides as follows; where there is a conflict between the provisions of this Act and any other written law, the provisions of this Act shall prevail
33. Kenya Law Reform Commission proposed: expound or delete sub clause (5).

The Committee agreed with the following proposals made by the stakeholders;

- a) The proposal to redraft of clause 9 for clarity purposes.
- b) The proposal of participation of persons with disabilities should be adopted to allow for inclusivity of everyone in the process.
- c) The proposal providing that where there is conflict in the provisions of this Act and any other written law, the provisions of this Act shall prevail.

The Committee disagreed with the proposal of providing a time frame of 6 months as it was prohibitive.

MIN NO/DAA&GPC/PBL/2024/023: ADJOURNMENT

The meeting was adjourned at one in the afternoon. (1.00 pm). The next meeting will be held at 2.00pm.

Signed.....Date.....

Hon. Daniel Epuyo Nanok, CBS, M.P.
Chairperson

MINUTES OF THE 5TH SITTING OF THE COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY HELD AT PAVILLION CONFERENCE ROOM, HILTON GARDEN INN HOTEL IN MACHAKOS COUNTY ON FRIDAY, 23RD FEBRUARY, 2024 AT 2.00 PM.

PRESENT

1. The Hon. Daniel Epuyo Nanok, M.P. - **Chairperson**
2. The Hon. (Eng.) John Kiragu Chege, M.P.- **Vice Chairperson**
3. The Hon. Moses Malulu Injendi, M.P.
4. The Hon. Charles Onchoke Mamwacha, M.P.
5. The Hon. George Gachagua, M.P.
6. The Hon. John Waluke Koyi, M.P.
7. The Hon. (Dr.) John Ariko Namoit, M.P.
8. The Hon. Rindikiri Mugambi Murwithania, M.P.
9. The Hon. Anthony Kenga Mupe, M.P.
10. The Hon. Abdirahman Mohamed Abdi, M.P.
11. The Hon. Phelix Odiwuor Khodhe, M.P.
12. The Hon. Talib Ahmed Abubakar, M.P

APOLOGIES

1. The Hon. Mohamed Mohamed Ali, M.P.
2. The Hon. Raphael Sauti Wanjala,
3. The Hon. James Gakuya Mwangi, M.P
4. The Hon. Timothy Wanyonyi Wetangula, M.P.
5. The Hon. Oscar Kipchumba Sudi, M.P.
6. The Hon. Adams Kipsanai Korir, M.P.
7. The Hon. Josses Kiptoo Lelmegit, M.P.
8. The Hon. Kitilai Ole Ntutu, M.P.
9. The Hon. Suzanne Ndunge Kiamba, M.P.

IN- ATTENDANCE

SECRETARIAT

- | | |
|----------------------------|----------------------------|
| 1. Ms. Lucy Kimathi | Principal Clerk I |
| 2. Ms. Ella Kendi | Clerk Assistant I |
| 3. Ms. Fidlizah S. Mwagogo | Clerk Assistant III |
| 4. Ms. Marlene Ayiro | Principal Legal Counsel II |
| 5. Ms. Deborah Mupusi | Media Relations II |
| 6. Mr. Silas Korir Lomutur | Research Officer III |
| 7. Mr. Stanley Lagat | Serjeant- At- Arms |
| 8. Mr. Meldrick Sakani | Audio Officer |
| 9. Ms. Juliet Minayo | Office Assistant |
| 10. Ms. Leah Memsap | Attachee |

MIN NO/DAA&GPC/PBL/2024/018: PRELIMINARIES

The meeting was called to order at two in the afternoon (2.00 p.m.).

**MIN NO/DAA&GPC/PBL/2024/019: CONSIDERATION OF THE MEMORANDA
ON THE PUBLIC PARTICIPATION BILL**

The Legal Counsel took the Committee through the memoranda received from various stakeholders on Public Participation Bill, 2023 as follows; -

Title of the bill: -

1. Kenya Devolution Civil Society Organizations Working Group proposed: amendment of the name to "The Civic Education and Public Participation Bill 2023"
2. Joint Kiambu CSOs proposed: amendment on the title to include civic education.

Clause 1

3. Council of governors proposed: an amendment of the long title as follows "An act of parliament to provide for a general framework for effective public participation; to give effect to the constitutional principles of democracy and participation of the people as provided for in the constitution, and for connected purposes"
4. Kenya Devolution Civil Society Organizations Working Group proposed: amend long title to include article 174(c) and (d) of the Constitution of Kenya.

Clause 2

5. Kenya Devolution Civil Society Working Groups proposed: Cabinet Secretary means the Cabinet Secretary responsible for public Service
6. Kenya Law Reform Commission proposed: amendment of the definition of "Cabinet Secretary"
7. Attorney General proposed: in definition of "Cabinet Secretary", consider revising to align with Kenya Public Participatory Policy which identifies the Office of the Attorney General as the lead agency in implementation of the Policy and in collaboration with the Ministry responsible for devolution, is mandated to establish a multi sectoral coordination framework for ensuring effective public participation
8. Civil Society Parliamentary Engagement Network proposed: amendment of the definition of Cabinet Secretary to be restricted to the Attorney General
9. University of Nairobi Women Economic Empowerment Hub proposed: amendment of the definition of "public participation" to read as follows; public participation means the qualitative and quantitative process through which the public are meaningfully engaged in understanding and contributing to decision making processes by state organs and public offices at the policy making, law making and implementation level
10. We Care Community Based Organization proposed: amendment of the definition of public participation to read as follows; public participation means the process through which the public is fully engaged and involved in the formulating, understanding and

contributing to the decision- making process and their views considered by state organs and public offices at the policy making, implementation and evaluation levels

11. Centre for Economic Governance proposed: amendment of the definition of public participation to read as follows; public participation means the process through which the public is engaged in understanding and contributing to decision making processes by state organs and public offices at the policy making, law making implementation and audit level
12. Civil Society Parliamentary Engagement Network (CSPEN) proposed: amendment of the definition of public participation as follows; public participation means the process where individuals and governmental and non-governmental groups are engaged and influence decision making in policy, legislation, service delivery, oversight, audit and developmental matters.
13. Joint Kiambu CSOs proposed: amendment of the definition of public participation as follows; public participation in government is any process that involves members of the public in government decision making
14. Office of the Attorney General proposed; amendment of the term public participation as follows; public participation means the process by which citizens as individuals, groups or communities take part in the conduct of public affairs, interact with the state and other non-state actors to influence decision, policies, programs, legislations and provide oversight in service delivery development and other matters concerning their governance and public interest either directly or indirectly through freely chosen representatives.
15. Dr. M.J. Okumu proposed: amendment of the definition of public participation by inserting the word "genuine" immediately after the words "means the"
16. Kenya Devolution Civil Society Working Group proposed: amendment of the definition of public participation to include planning, budgeting, monitoring, evaluation and auditing as part of the decision making processes for citizen engagement in decision making processes.

New Clause

17. National Gender and Equality Commission (NGEC) proposed: the word "access" includes access to information and services, fittings, amenities, build environment and infrastructure
18. National Gender and Equality Commission (NGEC) proposed: "access to information includes braille, sign language, large texts, websites and local language
19. University of Nairobi Women Economic Empowerment Hub proposed: insertion of new definition "meaningful participation
20. Attorney General proposed: insertion of the following new definitions as follows; "individual" means any citizen or resident of the country, regardless of age, gender, ethnicity, social status or any other differentiating factor; "groups of individuals" includes but not limited to, communities, associations, organizations and social

movements; " legal person" includes an entity recognised by law with legal rights and responsibilities such as a company, a non-profit organization and a trade union

21. Coast Civil Society Network for Human Rights proposed: insertion of a new definition as follows; "public" includes individuals, community group, civil society organizations and businesses
22. Strathmore Centre for Intellectual Property and Technology Law (CIPIT) proposed: insertion of a new definition "public awareness"
23. Kenya Climate Change Working Group proposed: insertion of a new definition "public"
24. Civil Society Parliamentary Engagement Network proposed: insertion of new definitions as follows: "civil education" means the process of effectively imparting information and creating awareness of decision making processes, legislations, public policy, rights of the public and responsibilities of state organs and public offices, including how these rights and responsibilities are exercised and accessed by the public and includes classroom based learning, informal training, experiential learning and mass media campaigns.

Clause 4

25. Joint Kiambu CSOs proposed: amendment of clause 4(a) as follows; add article 1 of the Constitution as an object of the Act, amendment of 4(d) to make clear that public awareness includes civic education
26. We Care Community Based Organization proposed: amendment to read as follows; the object of this act is to safeguard the sovereign power of the people of Kenya as enshrined in article 1 of the Constitution
27. Civil Society Parliamentary Engagement Network (CSPEN) proposed: amendment to include Article 174 (c) and Article 184 (1) (c) of the Constitution among the Articles that the Act intends to give effect to under sub clause 4 (a)
28. Caucus on Disability Rights Advocacy (CDRA) and the United Disabled Persons of Kenya (UDPK) proposed: promotion of inclusiveness in public participation for all persons and in particular persons with disabilities
29. National Treasury and Economic Planning proposed: amendment of section 4 (a) by providing for public participation in matters to do with the environment as provided for in Article 69 (1) (d)
30. The Council of Governors proposed: give effect to the principles of public participation as provide for Articles 1 (2)/ 10 (2), 35, 69 (1) (d), 118, 175 (c) and (d), 184 (1) (c), 196, 201 (a) and 232 (1) (d)
31. University of Nairobi Women Economic Empowerment Hub proposed: a new object to give a prescribed legal framework for public participation that is meaningful and purposeful for the citizens of Kenya

32. Kenya Devolution Civil Society Organizations Working Group proposed: to include civic education as an objective for enabling or promotion of public participation also insertion of a new provision on guiding principles as follows;

- (a) That public participation shall be a two-way process with feedback to citizens given on decisions made actions taken and results achieved by the county government
- (b) That public participation shall be a continuous process and not a one-time event
- (c) That the public communities and organizations that shall be affected by a decision shall have a right to be consulted and involved in the decision making process
- (d) Provisions of timely and relevant information accessible to all members of the public so that they are aware and can engage in decisions that affect them
- (e) Adherence to the principles under Article 10 and chapter six of the Constitution
- (f) Adherence to the principles of public participation prescribed by section 87 of the County Government Act and any written law and
- (g) Promotion of sustainable decisions recognizing needs and interest of all participants including decision makers.

Clause 5

33. Joint Kiambu CSOs proposed amendment to clause 5 as follows; without prejudice to the generality of section 3, each state organ or public office shall facilitate public participation in governance on matters including:

- (a) formulation of policies
- (b) budgeting and financial management
- (c) law making processes or
- (d) any other matter as may be prescribed in the regulations.

34. Kenya Devolution Civil Society Organization Working Group proposed amendment to paragraph a, b and c as follows;

- (a) Formulation and implementation of policies
- (b) Planning, budgeting and financial management
- (c) Making and implementation of laws and a sub -clause:
- (d) To provide for public participation in oversight processes including financial audits and overall service delivery processes
- (e) Rename clause 5 (d) to 5 (e)

35. Civil Society Parliamentary Engagement Network (CSPEN) proposed; insertion of a new scope of application- vetting of select State officers

36. Strathmore Centre for Intellectual Property and Technology Law (CIPIT) proposed; insertion of a new scope of application (d) – the scope of application to include the “the implementation of functions that are far reaching on the public communities and organizations”

37. Kenya Law Reform Commission proposed; amendment of clause 5 to incorporate the full cycle of government action, scope to include:

- (a) Implementation on policies
- (b) Review or reform of legislation
- (c) Development and implementation on government programmes and projects and

(d) Implementation of government projects

38. With prejudice to the generality of section 3, each state organ or public office shall facilitate public participation on matters relating to:

- (a) formulation of policies
- (b) budgeting and financial management
- (c) law making processes or
- (d) any other matter as may be prescribed in the regulations.

Committee Observations and resolutions

Following the deliberations, the Committee agreed with the following proposals made by the stakeholders;

Agreed with:

1. The clarification of the role of the Attorney General in clause 2
2. To add all constitutional provisions that make mention of public participation
3. Inclusivity of persons with disabilities through proper infrastructure and braille and sign language
4. Use of the word "individual" which provides clarity to the definition of public participation
5. Defining the word "meaningful" as this will minimize ambiguity and provide clarity of what a meaningful opportunity is.
6. There is need to isolate all constitutional provisions that deal with public participation and add them to the objects of the Act.

Disagreed with:

Following the deliberations, the Committee disagreed with the following proposals made by the stakeholders;

1. Inclusion of the Civic education in the title of the bill as this will broaden the scope of public participation and that the Constitution of Kenya does not provide for Civic education;
2. Replacement of AG with a Cabinet Secretary, since the AG is in charge and lead agency in the implementation of the Act
3. This is because measuring qualitative and quantitative factors in public participation can be challenging. However, it is important to note that the terms "qualitative" and "quantitative" are more commonly associated with data processing and may not be directly relevant to the public participation process.
4. Involvement of the public in the auditing process will be costly due to budget constraints
5. Inserting the word "genuine" in the title of the bill, "Public Participation," does not clarify what qualifies as genuine action in public participation.

6. The proposal to involve of the public in planning, budgeting, monitoring and evaluation processes would be costly due to budget constraints
7. The proposal to include words "public awareness" since the words are unnecessary to the definition
8. Involvement of the public in budgeting is not cost effective and obviously a tedious process

MIN NO/DAA&GPC/PBL/2024/020: ADJOURNMENT

The meeting was adjourned at four in the afternoon. (4.00 pm). The next meeting to be held on Saturday 24th February, 2024 at 10.00am.

Signed.....Date.....

Hon. Daniel Epuyo Nanok, CBS, M.P.
Chairperson

MINUTES OF THE 4TH SITTING OF THE COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY HELD AT HILTON GARDEN INN HOTEL, MACHAKOS COUNTY ON FRIDAY, 23RD FEBRUARY, 2024 AT 9.00 AM.

PRESENT

1. The Hon. Daniel Epuyo Nanok, M.P. - **Chairperson**
2. The Hon. (Eng.) John Kiragu Chege, M.P.- **Vice Chairperson**
3. The Hon. Moses Malulu Injendi, M.P.
4. The Hon. Charles Onchoke Mamwacha, M.P.
5. The Hon. George Gachagua, M.P.
6. The Hon. John Waluke Koyi, M.P.
7. The Hon. (Dr.) John Ariko Namoit, M.P.
8. The Hon. Rindikiri Mugambi Murwithania, M.P.
9. The Hon. Anthony Kenga Mupe, M.P.
10. The Hon. Abdirahman Mohamed Abdi, M.P.
11. The Hon. Phelix Odiwuor Khodhe, M.P.
12. The Hon. Talib Ahmed Abubakar, M.P.

APOLOGIES

1. The Hon. Mohamed Mohamed Ali, M.P.
2. The Hon. Raphael Sauti Wanjala,
3. The Hon. James Gakuya Mwangi, M.P
4. The Hon. Timothy Wanyonyi Wetangula, M.P.
5. The Hon. Oscar Kipchumba Sudi, M.P.
6. The Hon. Adams Kipsanai Korir, M.P.
7. The Hon. Josses Kiptoo Lelmegit, M.P.
8. The Hon. Kitilai Ole Ntutu, M.P.
9. The Hon. Suzanne Ndunge Kiamba, M.P.

IN- ATTENDANCE

SECRETARIAT

- | | |
|----------------------------|----------------------------|
| 1. Ms. Lucy Kimathi | Principal Clerk I |
| 2. Ms. Ella Kendi | Clerk Assistant I |
| 3. Ms. Fidlizah S. Mwagogo | Clerk Assistant III |
| 4. Ms. Marlene Ayiro | Principal Legal Counsel II |
| 5. Ms. Deborah Mupusi | Media Relations II |
| 6. Mr. Silas Korir Lomutur | Research Officer III |
| 7. Mr. Stanley Lagat | Serjeant- At- Arms |
| 8. Ms. Juliet Minayo | Office Assistant |
| 9. Mr. Meldrik Sakani | Audio Officer |
| 10. Ms. Leah Memsap | Attachee |

MIN NO/DAA&GPC/PBL/2024/015: PRELIMINARIES

The meeting was called to order at thirty- minutes past nine in the morning (9.30 a.m.), followed by a word of prayer and introductions thereafter.

MIN NO/DAA&GPC/PBL/2024/016: BRIEF ON THE PUBLIC PARTICIPATION BILL, 2023

Ms. Marlene Ayiro, Principal Legal Counsel, took the Committee through the brief on the Public Participation Bill, 2023 in which she stated as follows; -

1. Public participation is a fundamental dimension of democracy and allows for wide-sector consultation on matters of national importance before fundamental decisions are made.
2. Public participation is a process that provides individuals with an opportunity to influence and improve the qualities of decisions made and also allows for better policy outcomes.
3. The legal right to participate is well grounded in international conventions and covenants that form part of our laws which include the Universal Declaration of Human Rights (UDHR) the International Covenant on Civil and Political Rights, (ICCPR), Convention on the Rights of Persons with Disabilities, the African Charter on Human and people's rights (ACHPR) whose tenets are acceptable world over.
4. The Public Participation Bill, 2023 sought to provide a legal framework for effective public participation. The Bill therefore proposes to provide a mechanism to facilitate effective and coordinated public participation.

Comparative analysis from different jurisdictions: -

- i. In South Africa Public participation is regarded as the cornerstone for democracy and service delivery. Public participation is the process by which Parliament and provincial legislatures consult with the people and interested or affected individuals, organizations and government entities before making a decision. (S.A) the framework is more specific to legislatures and is known as the Legislative Sector Public Participation Framework, which has become the overarching guideline setting out the norms and standards of Public participation. There is in place a budgetary as well as a human resource allocation to ensure this constitutional visions of Public participation is realized.
- ii. In Uganda- Article 38 of the Constitution of Uganda guarantees citizen participation by providing that every Ugandan has the right to participate in the affairs of government, and to influence government policies. Article 41 guarantees the right of access to information, which is an essential precondition for participation. The Constitution further provides that the local government system is aimed at decentralization and ensuring people's participation and democratic control in decision-making. However, there is no standalone legislation on public participation in Uganda.
- iii. The the United Kingdom has in the past decade seen a tremendous amount of government sponsored activity to increase the involvement of people in decisions, policies and services in public life. For a number of reasons UK government, at all levels, have committed publicly to increasing the involvement and empowerment of ordinary citizens.

Overview of the Bill: -

5. Clause 2 provides for the definition of terms.
6. Clause 3 provides for the application of the Act.
7. Clause 4 provides for objects of the Act which is to enhance, promote and facilitate public participation in governance processes and in particular to give effect to the principles of public participation as provided for in the Constitution; promote democracy and participation of the people in accordance with Article 10 of the Constitution;

- promote transparency and accountability in decision making; and enhance public awareness and promote public participation in governance processes.
8. Clause 5 provides for the scope of public participation.
 9. Clause 6 provides for the conduct of public participation. A state organ or public office is required to provide reasonable and meaningful opportunities for public participation.
 10. Clause 7 provides for the rights of a member of the public in public participation.
 11. Clause 8 provides for the determination of the responsible authority. This section determines what body is the responsible authority for the purposes of the Act
 12. Clause 9 provides for the public participation guidelines. The responsible authority is required to develop guidelines for undertaking public participation in the respective institution.
 13. Clause 10 provides for the publication of specific public participation guidelines
 14. Clause 11 provides for financial provisions while Clause 12 provides for preparation of the financial reports
 15. Clause 13 provides for the general penalty and clause 14 the regulations to be made by the Cabinet Secretary. The schedule highlights the factors to be considered in public participation, access to public participation processes, notice and access to information for public participation.

Committee observations

Following the deliberations, the Committee made the following observations-

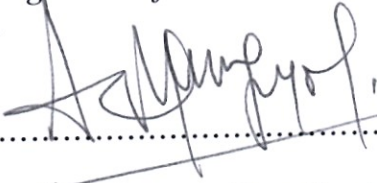
- i. Public participation in Kenya is presently anchored in the Constitution among the national values and principles of governance and attendant provisions of the constitution. To give effect to those provisions the state organs have outlined modalities for conducting public participation eg Parliament standing Orders outlines the process. However, there is no clear, cross-cutting, and multi-sectoral framework that governs public participation in Kenya and has therefore resulted in the inconsistency in the conduct of public participation in Kenya.
- ii. Enacting the proposed law without amendments would be overly restrictive and prohibitive, making it difficult to implement even in an ideal situation. Therefore, it is necessary for the Committee to propose various amendments to ensure the law is practical and can be effectively implemented.
- iii. Countries like the United Kingdom, South Africa and Uganda conducts public participation effectively despite not having a law in place.
- iv. The policy on Public Participation was approved by the Cabinet. Therefore, it was necessary for the Committee to be briefed on the provisions of the policy in order to improve the proposed bill.

MIN NO/DAA&GPC/PBL/2024/017: ADJOURNMENT

The meeting was adjourned at one p.m. (13.00 pm). The next meeting to be held in the afternoon.

Signed.....

Date.....


Hon. Daniel Epuyo Nanok, CBS, M.P.
Chairperson

MINUTES OF THE 2ND SITTING OF THE COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY HELD IN COUNTY HALL MINI CHAMBER, PARLIAMENT BUILDINGS ON THURSDAY, 8TH FEBRUARY, 2024 AT 10.00 AM.

PRESENT

1. The Hon. Daniel Epuyo Nanok, M.P. - **Chairperson**
2. The Hon. Charles Onchoke Mamwacha, M.P.
3. The Hon. Moses Malulu Injendi, M.P.
4. The Hon. George Gachagua, M.P.
5. The Hon. Talib Ahmed Abubakar, M.P.
6. The Hon. (Dr.) John Ariko Namoit, M.P.

APOLOGIES

1. The Hon. (Eng.) John Kiragu Chege, M.P. - **Vice Chairperson**
2. The Hon. Mohamed Mohamed Ali, M.P.
3. The Hon. Raphael Sauti Wanjala,
4. The Hon. Timothy Wanyonyi Wetangula, M.P
5. The Hon. James Gakuya Mwangi, M.P
6. The Hon. Adams Kipsanai Korir, M.P.
7. The Hon. Anthony Kenga Mupe, M.P.
8. The Hon. Oscar Kipchumba Sudi, M.P.
9. The Hon. Phelix Odiwuor Khodhe, M.P.
10. The Hon. Suzanne Ndunge Kiamba, M.P
11. The Hon. John Walike Koyi, M.P.
12. The Hon. Rindikiri Mugambi Murwithania, M.P.
13. The Hon. Kitilai Ole Ntutu, M.P.
14. The Hon. Josses Kiptoo Lelmengit, M.P.
15. The Hon. Mohamed Abdi Abdirahman, M.P.

IN- ATTENDANCE

SECRETARIAT

- | | |
|----------------------------|----------------------|
| 1. Ms. Ella Kendi | Clerk Assistant I |
| 2. Ms. Fidlizah S. Mwagogo | Clerk Assistant III |
| 3. Mr. Peter Barasa | Legal Counsel II |
| 4. Mr. Silas Korir Lomutur | Research Officer III |
| 5. Mr. John Nduaci | Serjeant- At- Arms |
| 6. Leah Memsap | Attachee |

MEMBERS OF THE PUBLIC

- | | |
|--------------------------|--|
| 1. Dr. M. J. Okumu | - Advocate |
| 2. Mr. Gitungo Kamere | - Civil Society Parliamentary Engagement Network |
| 3. Mr. Benjamin Mwamburi | - Civil Society Parliamentary Engagement Network |
| 4. Mr. Akal Simba | - Kenya Youth Federation |
| 5. Mr. Ephraim Makada | - Kenya Youth Federation |
| 6. Ms. Vivian Wanjiru | - Institute of Public Finance (IPF) |
| 7. Ms. Victoria Justus | - Institute of Public Finance (IPF) |
| 8. Ms. Judy Mwaniki | - Health NGOs Network |

9. Mr. Jacob Ngumi	-	Health NGOs Network
10. Ms. Seline Achieng	-	Women Challenged to Challenge
11. Ms. Brenda Nabututu	-	Women Challenged to Challenge
12. Ms. Sharon Musakali	-	Health NGOs Network
13. Mr. Leonard Kahumo	-	Maendeleo ya Vijana wa Kenya
14. Mr. Kenneth Wangai	-	Women Challenged to Challenge
15. Ms. Emily Serah	-	Centre for Economic Governance
16. Ms. Sarah Nduku	-	Health NGOs Network
17. Ms. Janet Mutuku	-	Women Challenged to Challenge
18. Ms. Faridah Chemutai	-	Health NGOs Network
19. Ms. Eunice Ngui	-	Health NGOs Network
20. Mr. Keli Christant Musyoka	-	Young Professionals Development

AGENDA

1. Preliminaries
 - i) Prayers
 - ii) Adoption of the Agenda
2. Confirmation of the Minutes of the previous sitting
3. Matters Arising
4. **Public hearings on Public Participation Bill, 2023.**
5. Any other Business
6. Adjournment and date of the next meeting

MIN NO/DAA&GPC/PBL/2024/006: PRELIMINARIES

The meeting was called to order at twenty-five minutes past ten in the morning (10.25 a.m.), followed by a word of prayer and introductions thereafter. The agenda of the meeting was adopted having been proposed by Hon. Talib Ahmed Abubakar, M.P. and seconded by Hon. Moses Malulu Injendi, M.P.

The Chairperson in his opening remarks, welcomed the Members of the Committee and the members of the public and further emphasized on the need for involving the public in law making process. In addition, he encouraged the members of public to share their opinions and suggestions so as to enhance the draft law.

MIN NO/DAA&GPC/PBL/2024/007: CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETINGS

There were no minutes for confirmation.

MIN NO/DAA&GPC/PBL/2024/008: SUBMISSIONS FROM THE STAKEHOLDERS AND THE PUBLIC

The stakeholders and members of the public made a presentation of their submissions as follows;

1. Submissions by Dr. M.J. Okumu, an Advocate

He proposed that; -

- i. Civic education for the public should be done by Parliament since it is the custodian of the bill
- ii. Insertion of the word “genuine” just before the word process, should be included in the definition of public participation bill.

- iii. Clause 6 in the conduct of public participation, sufficient notice of 24-21 days should be given to the public in advance, sufficient distribution of documents should also be done,
- iv. Clause 9 and 10 that the Committee should look into the implementation of the bill within the six-month period after gazettelement
- v. That a minimum of 1-2% of the national budget and 3-5% from the county government to be allocated to cater for expenses incurred during public participation exercise
- vi. A minimum of three announcements should be made in the local dailies to invite members of the public for the public participation and can include; chamas, women's groups, youth groups, people with disabilities, registered whatsapp groups and bunge la wananchi and
- vii. Clause 13, that a minimum of one million shillings should be set as the penalty instead of the three hundred thousand shillings that has been proposed

2. Submissions by Civil Society Parliamentary Engagement Network(CSPEN)

They proposed that CSPEN is a forum for non-state actors bringing together civil society organizations, professional associations whose programme involve working with the legislature. It was further stated that the submissions incorporate views of the several partner organizations. Their proposals were as follows; -

Clause 2

- i. insertion of a new definition of the word "civic education" because civic education is crucial for effective public participation in decision making within a democratic society.
- ii. Insertion of the definition of "interested party" to ensure that public participation proceedings include all persons not just a cross-section of the public

Clause 4

- iii. insertion of Article 174C and Article 184 1C of the Constitution among the articles that the Act intends to give effect to under sub clause 4 (a). These articles highlight public participation as an object of devolution and as a key principle in the governance of urban areas and cities.

Clause 5

- iv. Insertion of vetting processes of select state officers to be involved in public participation

Clause 6

- v. Insertion of sub-clause (3) to highlight components of meaningful public participation

Clause 7

- vi. proposed the insertion of additional rights under sub-clause (2): that no sanctions should be made to members of the public for attending and making their submissions; that the public be provided with ample time to make their submissions; that sign language be included in the proposed bill. This will ensure that that the citizens express themselves freely.

Clause 8

- vii. Insertion of sub-clause (8) to highlight that the stated responsible authorities hold the power to delegate the performance of the duties within the Act to an officer with that specific scope or any other officer within the entity/body.

Clause 12

- viii. Amend the clause to include a summary of the number and nature of public participation meetings, immediate output and outcomes from the public involvement and an update on the future steps or progress of the matters under consideration.
- ix. Clause 13: that the bill must clearly define fines to the public

General public participation guidelines

- x. On factors to be considered, introduce a new sub-clause under guideline 1 “reasonable accommodation that persons with disabilities may require to participate meaningfully, including qualified sign language, interpreters, physically accessible infrastructure and documents provided in braille/large prints”
- xi. On proposed notice, ensure that adequate notice has been defined to avoid abuse, an insertion of social media platforms as place for publication and distribution of notices.
- xii. Define clearly what amounts to adequate notice to avoid abuse
- xiii. Amend guideline 5 to provide atleast 14 days as the timeline for the publishing and distribution of relevant information.
- xiv. Amend guideline 9 to specify what constitute disruptive behavior and what should happen if a public official causes it.

3. Submissions by Institute of Public Finance:

- (i) That public participation is entrenched in the law as a national value and principle of governance and should therefore be funded adequately
- (ii) That adequate notice of 14-21 days to be given to the public to make their proposals and submissions to Parliament
- (iii) That the public get feedback on their input through their submissions within a proposed timeline and
- (iv) That the public participation reports be uploaded for the public to interact with the documents.

4. Submissions by Kenya Youth Federation:

- (i) Inclusion of the word genuine in the definition of the term public participation
- (ii) That the definition of the term public participation should be simplified to a language that the public can understand
- (iii) That instead of a definite time frame, they proposed use of a figure that is inclusive of gender, people with disabilities and races and
- (iv) Clause 10, include other variants of communication to ensure inclusivity of persons with disabilities

5. Submissions by Health NGOs Network:

- (i) Amend the title of the bill to “the civic education and public participation bill, 2023
- (ii) Change the long title of the bill to include Article 174(c) (d) of the Constitution
- (iii) Amend the definition of CS to provide that the CS is responsible for implementation is CS for public service

- (iv) Amend definition of public participation to include monitoring, planning, budgeting, evaluation and auditing
- (v) Include an additional object of the bill on civic education
- (vi) Clause 6 include a section on interest and relevance of stakeholders
- (vii) Clause 12, to include the word 'all' to ensure that all reports for all public participation are available
- (viii) That adequate notice of 14-21 days to be given to the public to make their proposals and submissions to Parliament,
- (ix) That the bill should include sign language and a local national language,
- (x) That placement and custodian of the public participation bill should be the Cabinet Secretary in charge of Public Service
- (xi) That virtual participation of Kenyans in diaspora should ensure inclusion of all Kenyans
- (xii) That the word confidentiality should be removed as part of the guidelines
- (xiii) Include a redress mechanism and a section on feedback

6. Submissions by Women with Disabilities:

- i. Proposed accommodation for persons with disabilities in sign language and braille, both small and large print.

7. Submissions by Centre for Economic Governance:

- i. That there should be annual reports prepared with information on the process and summary of outcomes of the public participation and
- ii. Add section 9 to include, complaints, redress and mechanisms.

Committee observations

The committee deliberated on the submissions and made the following observations-

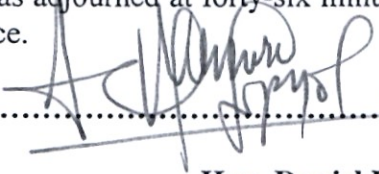
1. Inclusion of the word "genuine" in the definition of the word public participation bill will not enhance the definition as it is difficult to determine what amounts to genuine public participation;
2. On the proposal to cap the budget for public participation at 1-2% at national level and 3-5% at the county level, the Committee disagreed with the proposal stating that the budget allocated might be inadequate or more than what is required and that the determination of the required financial resources is at the discretion of the individual state organ/public office
3. There is need to include other forms of communication for instance, sign language braille and social media for inclusivity
4. Civic education is a key component in meaningful public participation as it will ensure that the public is well informed on laws and procedures such as budget making processes.

Committee Resolution

The Committee resolved to subsequently hold a retreat from 22nd to 25th February, 2024 to analyze the memoranda received from the stakeholders and consider the draft report on the Bill.

MIN NO/DAA&GPC/PBL/2024/009: ADJOURNMENT

The meeting was adjourned at forty-six minutes past one p.m. (13.46 pm). The next meeting to be held on notice.

Signed..........Date.....20/2/2024.....

Hon. Daniel Epuyo Nanok, M.P.
Chairperson

**MINUTES OF THE 1ST SITTING OF THE COMMITTEE ON PARLIAMENTARY
BROADCASTING AND LIBRARY HELD IN THE MINI-CHAMBER, COUNTY HALL,
PARLIAMENT BUILDINGS ON TUESDAY, 7TH FEBRUARY, 2024 AT 10.00 AM.**

PRESENT

1. The Hon. Daniel Epuyo Nanok, M.P. - **Chairperson**
2. The Hon. Charles Onchoke Mamwacha, M.P.
3. The Hon. Mohamed Abdi Abdirahman, M.P.
4. The Hon. Moses Malulu Injendi, M.P.
5. The Hon. George Gachagua, M.P.
6. The Hon. Josses Kiptoo Lelmengit, M.P.

APOLOGIES

1. The Hon. (Eng.) John Kiragu Chege, M.P. - **Vice Chairperson**
2. The Hon. Mohamed Mohamed Ali, M.P.
3. The Hon. Raphael Sauti Wanjala,
4. The Hon. Timothy Wanyonyi Wetangula, M.P
5. The Hon. James Gakuya Mwangi, M.P
6. The Hon. Adams Kipsanai Korir, M.P.
7. The Hon. Anthony Kenga Mupe, M.P.
8. The Hon. (Dr.) John Ariko Namoit, M.P.
9. The Hon. Oscar Kipchumba Sudi, M.P.
10. The Hon. Phelix Odiwuor Khodhe, M.P.
11. The Hon. Suzanne Ndunge Kiamba, M.P
12. The Hon. John Walike Koyi, M.P.
13. The Hon. Rindikiri Mugambi Murwithania, M.P.
14. The Hon. Kitilai Ole Ntutu, M.P.
15. The Hon. Talib Ahmed Abubakar, M, P.

IN- ATTENDANCE

SECRETARIAT

- | | | |
|----------------------------|---|----------------------|
| 1. Ms. Ella Kendi | - | Clerk Assistant I |
| 2. Ms. Fidlizah S. Mwagogo | - | Clerk Assistant III |
| 3. Mr. Silas Korir Lomutur | - | Research Officer III |
| 4. Mr. Peter Barasa | - | Legal Counsel II |
| 5. Mr. Rodgers Kilungya | - | Audio Officer |
| 6. Ms. Faith Makena | - | Serjeant-at-arms |
| 7. Ms. Leah Memsap | - | Attachee |

Stakeholders

- | | | |
|----------------------|---|------------------------------|
| 1. Ms. Emily Chweya | - | Director Legal Services |
| 2. Ms. Olivia Simiyu | - | Senior Parliamentary Counsel |
| 3. Ms. Ann Saruni | - | National Housing Corporation |

AGENDA

1. Preliminaries
 - i) Prayers
 - ii) Adoption of the Agenda
2. Confirmation of the Minutes of the previous sitting
3. Matters Arising
4. **Meeting with the Principal Secretary, the National Treasury; the Solicitor General; and the Chief Executive Officer, Kenya Law Reform Commission to consider the Public Participation Bill, 2023.**
5. Any other Business
6. Adjournment and date of the next meeting

MIN NO/DAA&GPC/PBL/2024/001: PRELIMINARIES

The meeting was called to order at twenty-five minutes past ten in the morning (10.25 a.m.), followed by a word of prayer. The agenda was adopted having been proposed by Hon. Charles Ochonke, MP and seconded by Hon. Mohamed Abdi Abdirahman, M.P.

Further, the Chairperson informed the Members that the Principal Secretary, the National Treasury had sent a letter dated 5th February, 2024 informing the Committee that he was out of the Country on official duties and that a written memorandum would be submitted for Committee's consideration.

MIN NO/DAA&GPC/PBL/2024/002: CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETINGS

There were no minutes to confirm.

MIN NO/DAA&GPC/PBL/2024/003: SUBMISSION FROM THE OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE

Ms. Emily Chweya, the Director Legal Services in the Office of the Attorney General and Department of Justice appeared before the Committee on behalf of the Solicitor General and briefed the Committee as follows; -

1. Public participation in Kenya is governed by the Constitution and several Acts of Parliament including the County Governments Act, 2012, Statutory Instruments Act, 2013, and the Public Finance Management Act, 2012.
2. Upon review of various court cases that dealt with the question of public participation they have noted that the cases recommend public participation should take into account key principles of inclusivity, transparency, accessibility, timing, reasonableness, meaningful, effectiveness, Sufficiency of Information, Legal and Ethical Frameworks
3. The Cabinet approved the Kenya Public Participation Policy, 2023 on the 16th May, 2023 which establishes comprehensive standards for citizen engagement in national and county governance. It provides a framework to coordinate public participation and fulfil constitutional requirements for development and governance processes.

Further, the proposed amendments to the Bill were summarized as follows;

4. Revise the definition of Cabinet Secretary to align it with the Kenya Public Participation Policy which identifies this Office as the lead agency in the implementation of the Policy and in collaboration with the Ministry responsible for matters related to devolution, is mandated to establish a multi sectoral co-ordination framework for ensuring effective public participation. Further, Court rulings have established that the Attorney General is not a Cabinet Secretary, and their role doesn't involve ministerial responsibilities typically associated with the title.
5. Deletion of the term "Cabinet Secretary" in Clause 2. Instead, the term "Attorney General" should stand alone. This aligns with Article 156 of the Constitution, the Office of the Attorney General Act No 49 of 2012, and the Interpretation and General Provisions Act, which clearly outline the Attorney General's specific role and responsibilities. By making this change, we ensure accurate and consistent terminology within the legislation.
6. Aligning the definition of "public participation" set out in the Kenya Policy on Public Participation which states as follows; *"public participation" means the process by which citizens, as individuals, groups or communities take part in the conduct of public affairs, interact with the state and other non-state actors to influence decisions, policies, programs, legislation and provide oversight in service delivery, development and other matters concerning their governance and public interest either directly or indirectly through freely chosen representatives"*.
7. Amend clause 12 of the Bill, by including in the annual reports to Parliament or the County Assemblies, information on: Public Notification Mechanisms; Public Participation Budget; Disaggregated Participation Data and Modalities of Engagement.
8. Harmonising the responsibilities of the Cabinet Secretary under clause 14 and those of responsible authorities under clause 9. Clause 9 mandates responsible authorities to develop guidelines for undertaking public participation in their institutions while clause 14 mandates the Cabinet Secretary to develop regulations for implementing the Bill.
9. Include a clause on dispute resolution.
10. Include a clause under the Schedule on General Public Participation Guidelines on Non-discrimination and Accommodation. This ensures meaningful participation of all societal actors.
11. The bill to mandate the deliberate inclusion of diverse groups, particularly those most vulnerable to discrimination and historical exclusion, such as minorities, marginalized communities, women, youth, older adults, and children. In this regard, its proposed insertion of a clause to read;
"A state organ or public office shall incorporate the perspectives and participation of diverse groups, particularly those most vulnerable to discrimination and historical exclusion, such as minorities, marginalized communities, women, youth, older adults, people with disabilities, and children".
12. Harmonize the provisions of the Bill with the Kenya Public Participation Policy, specifically the co-ordinating mechanism for Ministries, Departments and Agencies (MDAs), county governments and non-state actors in facilitating effective public

participation and a monitoring and evaluation framework to determine the effectiveness of the public participation process.

13. Establish the Office of the Registrar of Public Participation who develops and co-ordinates the regulatory framework for public participation, monitors public participation activities, and reports to Parliament on the effectiveness of public participation processes by State organs or the establishment of an independent oversight body with diverse representation. This body should draw members from relevant government entities, including the Kenya National Commission on Human Rights (KNCHR) and one or two civil society organizations with recognized expertise in public participation.

Committee Observation

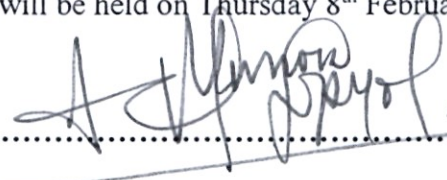
1. The Cabinet approved the Kenya Public Participation Policy, 2023 on the 16th May, 2023 which establishes comprehensive standards for citizen engagement in national and county governance.
2. The definition of the word "Cabinet Secretary" as proposed in the Bill may pose a challenge in identifying the particular state officer to be designated as the Cabinet Secretary.

MIN NO/DAA&GPC/PBL/2024/004: ANY OTHER BUSINESS

Public Hearings on the Public Participation Bill, 2023: The meeting was informed that the Committee was scheduled to undertake public hearings on Thursday, February 8th, 2024 from 10am and therefore the Members were urged to avail themselves for the meeting.

MIN NO/DAA&GPC/PBL/2024/005: ADJOURNMENT

The meeting was adjourned at twenty-two minutes past eleven p.m. (11.22 am). The next meeting will be held on Thursday 8th February, 2024.

Signed..........Date.....20/2/2024.....

Hon. Daniel Epuyo Nanok, M.P.
Chairperson

MINUTES OF THE 24TH SITTING OF THE COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY HELD IN MEDIA CENTRE, PARLIAMENT BUILDINGS ON TUESDAY, 28TH NOVEMBER, 2023 AT 12.00 NOON.

PRESENT

1. The Hon. Daniel Epuyo Nanok, M.P. - **Chairperson**
2. The Hon. John Waluke Koyi, M.P.
3. The Hon. Rindikiri Mugambi Murwithania, M.P.
4. The Hon. Charles Onchoke Mamwacha, M.P
5. The Hon. Kitilai Ole Ntutu, M.P.
6. The Hon. Mohamed Abdi Abdirahman, M.P.
7. The Hon. Talib Ahmed Abubakar, M.P.

APOLOGIES

1. The Hon. (Eng.) John Kiragu Chege, M.P. - **Vice Chairperson**
2. The Hon. Mohamed Mohamed Ali, M.P.
3. The Hon. Raphael Sauti Wanjala,
4. The Hon. Moses Malulu Injendi, M.P.
5. The Hon. Timothy Wanyonyi Wetangula, M.P
6. The Hon. James Gakuya Mwangi, M.P
7. The Hon. Adams Kipsanai Korir, M.P.
8. The Hon. Anthony Kenga Mupe, M.P.
9. The Hon. Josses Kiptoo Lelmengit, M.P
10. The Hon. (Dr.) John Ariko Namoit, M.P.
11. The Hon. Oscar Kipchumba Sudi, M.P.
12. The Hon. George Gachagua, M.P.
13. The Hon. Phelix Odiwuor Khodhe, M.P.
14. The Hon. Suzanne Ndunge Kiamba, M.P

SECRETARIAT

- | | |
|----------------------------|----------------------|
| 1. Ms. Ella Kendi | Clerk Assistant I |
| 2. Ms. Brigitta Mati | Legal Counsel I |
| 3. Mr. Enock Manwa | Clerk Assistant III |
| 4. Mr. Silas Korir Lomutur | Research Officer III |

AGENDA

1. Preliminaries
 - i) Prayers
 - ii) Adoption of the Agenda
2. Confirmation of the Minutes of the 21st meeting
3. Matters Arising
4. **Consideration of the Public Participation Bill, 2023.**
5. Any other Business

6. Adjournment and date of the next meeting

MIN NO/DAA&OSC/PBL/2023/112: PRELIMINARIES

The meeting was called to order at twenty-five minutes past noon (12.25 p.m.), followed by a word of prayer. Following that, the Chairperson welcomed the Members and further urged them to go through the Public Participation Bill, 2023 for better understanding of the provisions of the bill.

MIN NO/DAA&OSC/PBL/2023/113: CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETINGS

The agenda was deferred.

MIN NO/DAA&OSC/PBL/2023/114: CONSIDERATION OF PUBLIC PARTICIPATION BILL, 2023

The Chairperson invited the Legal Counsel to brief the Committee on the remaining clause by clause analysis of the Public Participation Bill, 2023. The Committee was briefed on the provisions of the bill in which they proposed the following amendments; -

Clause 13 provides a general penalty. The Committee had observed that the penalty was too lenient and suggested that the measures be put in place as a deterrent by including procedural nullification and individuals taking personal responsibility. It was therefore proposed a penalty of a fine not exceeding Ksh. 500,000 or imprisonment for a period of six months, with any action taken declared null and void.

Clause 14 provides for Regulations. The Committee agreed with the provisions of the clause

The Committee agreed with the Schedule as provided for in the bill

MIN NO/DAA&OSC/PBL/2023/115: ANY OTHER BUSINESS

Submission of memoranda and Public Hearings on the Public Participation Bill, 2023

The Meeting was informed that the Committee had received written submissions from thirteen (13) stakeholders following an advertisement placed in local dailies on 25th October, 2023 on public participation. Further, it was resolved that the public hearings be undertaken during the last week of January, 2024.

MIN NO/DAA&OSC/PBL/2023/116: ADJOURNMENT

The meeting was adjourned at a quarter to two p.m. (1.45 pm). The next meeting was set to be held on notice.

Signed..........Date.....5th December, 2023.....

**Hon. (Eng.) John Kiragu Chege, M.P.
Vice- Chairperson**

**MINUTES OF THE 23RD SITTING OF THE COMMITTEE ON PARLIAMENTARY
BROADCASTING AND LIBRARY HELD IN MEDIA CENTRE, PARLIAMENT
BUILDINGS ON TUESDAY, 7TH NOVEMBER, 2023 AT 10.30 AM.**

PRESENT

1. The Hon. Daniel Epuyo Nanok, M.P. - **Chairperson**
2. The Hon. (Eng.) John Kiragu Chege, M.P. - **Vice Chairperson**
3. The Hon. Moses Malulu Injendi, M.P.
4. The Hon. John Waluke Koyi, M.P.
5. The Hon. Timothy Wanyonyi Wetangula, M.P.
6. The Hon. Josses Kiptoo Lelmengit, M.P.
7. The Hon. Kitilai Ole Ntutu, M.P.
8. The Hon. Mohamed Abdi Abdirahman, M.P.
9. The Hon. Suzanne Ndunge Kiamba, M.P.
10. The Hon. Talib Ahmed Abubakar, M.P.

APOLOGIES

1. The Hon. Mohamed Mohamed Ali, M.P.
2. The Hon. Raphael Sauti Wanjala,
3. The Hon. James Gakuya Mwangi, M.P.
4. The Hon. Adams Kipsanai Korir, M.P.
5. The Hon. Rindikiri Mugambi Murwithania, M.P.
6. The Hon. Anthony Kenga Mupe, M.P.
7. The Hon. Charles Onchoke Mamwacha, M.P.
8. The Hon. (Dr.) John Ariko Namoit, M.P.
9. The Hon. Oscar Kipchumba Sudi, M.P.
10. The Hon. George Gachagua, M.P.
11. The Hon. Phelix Odiwuor Khodhe, M.P.

SECRETARIAT

- | | |
|----------------------------|----------------------|
| 1. Ms. Ella Kendi | Clerk Assistant I |
| 2. Brigitta Mati | Legal officer I |
| 3. Mr. Enock Manwa | Clerk Assistant III |
| 4. Mr. Silas Korir Lomutur | Research Officer III |

AGENDA

1. Preliminaries
 - i) Prayers
 - ii) Adoption of the Agenda
2. Confirmation of the Minutes of the 18th, 19th, 20th and 21st sittings
3. Matters Arising
4. **Consideration of the Public Participation Bill, 2023.**
5. Any other Business
6. Adjournment and date of the next meeting

MIN NO/DAA&OSC/PBL/2023/106: PRELIMINARIES

The meeting was called to order at twenty-five minutes past 10 O'clock (10.25 a.m.), followed by a word of prayer. Thereafter, the Chairperson welcomed the Members to the meeting.

MIN NO/DAA&OSC/PBL/2023/107: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed and seconded by Hon. Moses Malulu Injendi, M.P and Hon. Kitilai Ole Ntutu, M.P., respectively.

MIN NO/DAA&OSC/PBL/2023/108: CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETINGS

1. Minutes of the Eighteenth Sitting held on 17th August, 2023 were confirmed as true records of the proceedings having been proposed by the Hon. Kitilai Ole Ntutu, M.P and seconded by the Hon. Moses Malulu Injendi, M.P.
2. Minutes of the Nineteenth Sitting held on 13th September, 2023 were confirmed as true records of the proceedings having been proposed by the Hon. Josses Kiptoo Lelmengit, M.P and seconded by the Hon. Talib Ahmed Abubakar, M.P.
3. Minutes of the Twentieth Sitting held on 28th September, 2023 were confirmed as true records of the proceedings having been proposed by the Hon. Timothy Wanyonyi Wetangula, M. P and seconded by the Hon. Moses Malulu Injendi, M.P.
4. Minutes of the Twenty First Sitting held on 3rd October, 2023 were confirmed as true records of the proceedings having been proposed by the Hon. Talib Ahmed Abubakar, M. P and seconded by the Hon. Moses Malulu Injendi, M.P.

MIN NO/DAA&OSC/PBL/2023/109: MATTERS ARISING

Minutes of the 20th Sitting

Under MIN.NO/DAA&OSC/PBL/2023/94 on Matters Arising

The Committee was informed that Hon. Charles Onchoke, MP and Hon. Josses Lelmengit participated in the Africa Internet Summit that was held in South Africa from 26th to 30th September, 2023. Further, the meeting was informed that Hon. George Gachagua, MP and Hon. (Dr) John Ariko, MP attended the 18th Annual Meeting of Internet Governance Forum that was held in Kyoto, Japan from 8th to 12th October, 2023.

Minutes of 21st Sitting

Under MIN NO/DAA&OSC/PBL/2023/105 on visit to the Kenya National Archives and Documentation Service

It was noted that there is need for an engagement between the Committee, Library Department and the Kenya National Archives and Documentation Service to explore ways of enhancing the parliamentary library and learning facilities.

**MIN NO/DAA&OSC/PBL/2023/110: BRIEFING BY LEGAL COUNSEL ON
PUBLIC PARTICIPATION BILL,2023**

The Chairperson invited the Legal Counsel to brief the Committee on clause by clause analysis of the Public Participation Bill,2023. The Committee was briefed on the provisions of the bill in which they proposed the following amendments; -

1. Clause 2: provides for the definition of critical terms. The Committee proposed that clause 2 be amended as follows;
In the definition of the term “Cabinet Secretary” by deleting the words “and includes” and substituting therefor the word “or” to provide clarity on the clause.
2. In the definition of the term “Public Participation “by deleting the word “are” and substituting therefor the word “is” for the purpose of clarity Clause 3 provides for the application of the Act
3. Clause 4 provides for objects of the Act which is to enhance, promote and facilitate public participation in governance processes and in particular to give effect to the principles of public participation as provided for in the Constitution.
4. Clause 5 provides for the scope of public participation
5. Clause 6 provides for the conduct of the public participation. It was proposed that Clause 6 (2) be amended by inserting the word “office” immediately after the word “public” to correct a typographical error.
6. Clause 7 provides for the rights of a member of the public in public participation. That clause 7(1) be amended by defining the term “entity” which is a new term in the bill
7. Clause 8 provides for the determination of the responsible authority. That clause 8 (1) be amended by deleting the words “the purposes of this Act” and substituting therefor the word “developing guidelines”. This is to provide that each authority shall be responsible for developing their specific guidelines.
8. Clause 9 provides for the public participation guidelines
9. Clause 10 provides for the publication of the specific public participation guidelines
10. Clause 11 provides that a state organ or public office shall provide the necessary resources and shall include in its annual estimates provisions for expenses for purpose of undertaking public participation.
11. Clause 12 provides that each state organ or public office shall prepare an annual report on public participation at the end of each financial year containing a description of any complaints made against the institution in respect of public participation.
12. Clause 13 provides for a general penalty. The Committee observed that the penalty was too lenient and proposed that the measures to be as a deterrent by including nullification of the process and individuals to take personal responsibilities. Further, it was proposed the word “no” be deleted to correct a typographical error.

MIN NO/DAA&OSC/PBL/2023/111: ADJOURNMENT

The meeting was adjourned at twelve minutes past noon (12.12 pm). The next meeting was set to be held on notice.

Signed..........Date.....5th December 2022.....

**Hon. (Eng.) John Kiragu Chege, M.P.
Vice- Chairperson**

**ANNEXURE 3: ADVERTISEMENTS INVITING THE
PUBLIC TO SUBMIT MEMORANDA
ON THE BILL AND TO UNDERTAKE
PUBLIC HEARINGS**

Gachagua, who has been accused of arrogance by other leaders, in the 2027 General Election

Gachagua as Mt Kenya infighting rages

dent Ruto to pick Mr Gachagua over Interior Cabinet Secretary Kithure Kindiki as his deputy.

"I chaired the Karen meeting where we made a passionate plea to Ruto to appoint him as the running mate. We cried tears pleading his case to Ruto who was under immense pressure to pick Kithure Kindiki as the running mate," Mr Ngunjiri said.

"But once he got into power, he started sidelining those who pleaded his case to Ruto. You have now disowned most of us and you treat us like trash," he added.

Condescending leader

The same sentiments were to be repeated by Murang'a Senator Joe Nyutu, who took a swipe at the DP on January 14, saying the Mt Kenya region cannot afford to be in the hands of a "condescending leader" who goes about disparaging other leaders' names to higher authorities instead of uniting them into a fortress for future strategy.

The first-term senator added that "positions" do not win one direct endorsement since there are other considerations to winning unanimous acceptance.

He went ahead to ask President Ruto to replace Mr Gachagua with the Kiharu MP in his 2027 re-election bid, arguing that the President's prospects for re-election could be dimmed by maintaining Mr Gachagua as his deputy.

"We will request Ruto to choose a young person from Murang'a who is Ndindi Nyoro; Gachagua has lost his ground, treating people disrespectfully, including elected leaders," said Mr Nyutu.

Public Service Cabinet Secretary Moses Kuria, who has been at loggerheads with the DP, also got roped into the chorus, urging Mt Kenya region leaders to mentor young leaders like Mr Nyoro instead of subjecting them to political opposition.

"We should support the young leaders in Mt Kenya, and thus Ndindi Nyoro should not be fought," said the former Gatundu South MP.

Feeling the heat, Mr Gachagua hit back at his critics, saying he has no time for succession politics, which he termed an insult to Kenyans who expect service delivery.

"I was sworn in as the principal assistant to the President, and I will do just that. I will not be dissuaded from that by engaging in unnecessary and uncalled-for succession politics," said Mr Gachagua.

"I am focused on this administration and I have no other agenda but to make sure that I assist Pres-

ident Ruto to succeed in the economic transformation of this country," he added.

Speaking in Gilgil Constituency, Nakuru County, President Ruto moved to avert a fallout in the region by asking politicians to shun the succession debate.

He said that he was disturbed that Kenya Kwanza leaders elected to help him tackle different challenges were spending time talking about succession politics and forming political camps rather than seeking solutions to the problems.

"I want to ask leaders, especially those in UDA and Kenya Kwanza, to step down any contest for whatever position, whether in the present or future, so that we can work and focus on delivering to Kenyans," said the President.

"It will be an insult to Kenyans that instead of delivering our promises, we are politicking. Kenyans need to see who we are as leaders. Let them come slowly. We have said we will mentor them but they should not push us," he said.

Political analyst Javas Bigambo says the unfolding fight for the soul of the region is stemming from the division that preceded the picking of Mr Gachagua as Dr Ruto's running mate. He says that the region's politicians

who backed Prof Kindiki were yet to reconcile with the decision to drop the former Tharaka Nithi Senator.

He described as far-fetched, claims a powerful hand could be fermenting the division.

"I would not consider it as mere political posturing. It should be understood that there was a rift in UDA when they settled on Gachagua. Gachagua needs to bring together the MPs and try to unite them," said Mr Bigambo.

"I don't think the President could be the one fuelling the rift because he needs a united Mt Kenya for purposes of his re-election," he added.

The current political war facing DP Gachagua mirrors the one that Dr Josephat Karanja, Kenya's fifth vice-president, faced.

Elected in a by-election in 1986 as Mathare MP, Karanja was quickly elevated to the VP position in 1988 to replace Mwai Kibaki, who President Daniel Moi had moved to the Health docket after a falling out with him.

Dr Karanja took office with gusto, never sparing a moment to show off his powers, which became his Achilles' heel.

Karanja had no strong political base or experience, having served as an MP for only two years. Hardly a year into office, he called top security offi-

cials for a national security briefing when Moi was outside the country.

The move irked Moi who tore into an unnamed person who had dared usurp his powers. He set his attack dogs against Karanja, with former Embakasi MP David Mwenje moving a motion of no confidence against the VP.

What followed was Karanja's ignominious exit, resigning after just one year and one month in office.

Shareholders

Drawing parallels, when Mr Gachagua came into office, he pushed the narrative of the government being of only shareholders and that he was the de facto leader of Mt Kenya while Dr Ruto was the leader of the other regions.

Further, he used to publicly say he would be walking around State House with an eye out on who was visiting the President and having a say on the appointments made.

Unapologetic, the one-term Mathira MP acted like a co-President who wanted equal share of the government by virtue of Mt Kenya overwhelmingly voting for Kenya Kwanza.

comulo@ke.nationmedia.com,
mwangilink@gmail.com

15

Number of UDA lawmakers who endorsed Nyoro for the presidency in 2032


REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – SECOND SESSION

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE PUBLIC PARTICIPATION BILL (NATIONAL ASSEMBLY BILL NO. 52 OF 2023)

INVITATION FOR PUBLIC HEARING

WHEREAS, Article 118(1)(b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees, and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Public Participation Bill (National Assembly Bill No. 52 of 2023) was read a First Time on **Thursday, 12th October 2023** and referred to the Committee on Parliamentary Broadcasting & Library for consideration and reporting to the House;

AND WHEREAS, the Public Participation Bill (National Assembly Bill No. 52 of 2023), which is a Bill sponsored by the **Hon. Daniel Epuyo Nanok, MP**, seeks to provide a framework for effective public participation and to give effect to the constitutional principles of public participation and participatory democracy as provided for in Articles 1, 10, 35, 69, 118, 174, 184, 196, 201, and 232 of the Constitution;

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and Standing Order 127(3), and further to the invitation to the public for submission of memoranda published on 25th October 2023, it is notified to the general public that the Committee shall conduct **PUBLIC HEARING on Thursday, 8th February 2024 from 9.30am to 4.00pm in the Mini-Chamber, County Hall, Parliament Buildings Nairobi.**

The Committee shall discuss the contents of the Bill and its implications during the public hearing session. Members of the public are invited to attend and share their views on the Bill.

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/the-national-assembly/house-business/bills.

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
26th January 2024

"For the Welfare of Society and the Just Government of the People"

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Minneapolis	\$ 927
Amsterdam	\$ 949
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Central Bank of Kenya

CENTRAL BANK OF KENYA e-procurement seminar

Are you a prospective **CBK Vendor**?

The Central Bank of Kenya (CBK) has rolled out an **e-procurement system**. CBK will run e-procurement seminars in Kisumu Branch, Eldoret Branch and Meru Centre from **31st October, 2023**. The forums will be both **physical and virtual**.

You are expected to register in advance for the Seminar at this link;

<https://forms.gle/e8yEeDjHrC87H85s9>

Or Scan the QR-Code below



BANKI
KLU
YA
KENYA



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY THIRTEENTH PARLIAMENT - SECOND SESSION (2023)

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION

AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE PUBLIC PARTICIPATION BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 52 OF 2023)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Public Participation Bill, 2023 (National Assembly Bills No. 52 of 2023) was read a First Time on **Thursday, 12th October 2023** and referred to the National Assembly Committee on Parliamentary Broadcasting and Library for consideration and reporting to the House;

IT IS NOTIFIED THAT the Public Participation Bill, 2023 (National Assembly Bills No. 52 of 2023) is a Bill sponsored by the **Hon. Daniel Epuyo Nanok, MP** which seeks to provide a framework for effective public participation and to give effect to the constitutional principles of public participation and participatory democracy as enunciated in Articles 1.10, 35, 69, 118, 174, 184, 196, 201, and 232 of the Constitution;

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bill to the Committee on Parliamentary Broadcasting and Library.

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/the-national-assembly/house-business/bills

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to ena@parliament.go.ke to be received on or before **Monday, 6th November 2023 at 5.00 p.m.**

**S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY**

25th October, 2023

"For the Welfare of Society and the just Government of the People"

CARBACID INVESTMENTS plc

AUDITED GROUP RESULTS FOR THE YEAR ENDED 31ST JULY 2023

(Full Report and Financial Statements can be accessed on the Website www.carbacid.com)

The Directors of Carbacid Investments plc are pleased to announce the results for the year ended 31 July 2023.

Summarised consolidated income statement

	12 months to 31 July 2023 Shs '000	12 months to 31 July 2022 Shs '000
Turnover	1,720,343	1,415,580
Operating profit	1,012,329	840,177
Other income	394,298	320,988
Administrative Expenses	(333,344)	(266,608)
Fair value (loss)/gain on investment property	-	-
Revaluation of equity investments	26,561	22,674
Finance costs	(16,435)	(3,404)
Profit before taxation	1,080,982	913,825
Taxation charge	(284,899)	(208,852)
Net Profit After Tax	816,013	707,664
Deficit on revaluation of plant & equipment	(13,662)	-
Deferred income tax relating to items that will not be reclassified	4,099	-
Other comprehensive loss, net of tax	(9,563)	-
Total other comprehensive income for the year	806,450	707,664
ings per share - Basic & Diluted	Shs 3.20	Shs 2.76

Summarised consolidated statement of financial position

	As at 31 July 2023 Shs '000	As at 31 July 2022 Shs '000
ASSETS		
Non Current Assets		
Property, plant and equipment	1,360,091	994,565
Investment property	296,732	299,152
Intangible Assets	912	1,528
Right of use asset / Prepaid operating lease rentals	51,905	52,094
Financial Assets	2,382,670	2,358,031
	4,092,290	3,705,370
Working Capital		
Current assets	1,020,814	765,777
Current liabilities	(529,352)	(457,520)
Net working capital	491,462	308,257
Total net assets	4,583,974	4,004,227
EQUITY AND LIABILITIES		
Share Capital and Reserves		
Share capital	254,852	254,852
Share premium	27	27
Revaluation surplus	32,914	42,477
Retained earnings	3,874,109	3,497,144
	4,161,902	3,788,700
Non current liabilities	-	-
Borrowings	205,491	40,197
Deferred income taxes	216,581	175,330
Total equity and liabilities	4,583,974	4,004,227

Summarised consolidated statement of cash flows

	12 months to 31 July 2023 Shs '000	12 months to 31 July 2022 Shs '000
Balance at 1 August 2022	15,251	15,736
Net cash generated from operating activities	709,163	706,032
Net cash used in Investing activities	(403,027)	(552,199)
Cash used in payment of Dividends	(420,230)	(394,253)
Net cash generated from financing activities	186,297	68,035
Balance at 31 July 2023	117,454	15,251

Summarised consolidated statement of changes in equity for the year ended 31 July 2023

	Share Capital Shs '000	Share Premium Shs '000	Revaluation Surplus Shs '000	Revenue Reserves Shs '000	Total Shs '000
As at 1 August 2022	254,852	27	42,477	3,497,144	3,788,700
Net Profit for the period	-	-	-	816,013	816,013
Surplus on revaluation, net of tax	-	-	(9,563)	-	(9,563)
Final Dividend Paid	-	-	-	(433,248)	(433,248)
As at 31 July 2023	254,852	27	32,914	3,874,109	4,161,902

Results for the year ended 31 July 2023.

There was a 22% increase in turnover for 2023, reaching Shs 1,721 million (2022 - Shs 1,415 million). This increase was primarily driven by growth in regional demand, new products and continued search for new markets. Despite a substantial rise in cost of doing business arising from higher energy and fuel costs, the Group managed to maintain margins, only experiencing a minimal 0.5% decrease compared to the previous year. This achievement was made possible by maintaining a steadfast commitment to cost control and operational efficiency. The financial assets have continued to generate positive returns. There has been investment in new plant and fleet to increase capacity. The new plant will be operational in the first half of 2024.

Dividends

The Directors have resolved to recommend to shareholders that a Final Dividend of Shs 1.70 per share be declared payable to those shareholders registered at the close of business on 24th November 2023. The total dividend will amount to Shs 433,248,375/- (2022: Shs 433,248,375/-). The dividend will be payable on or about 15th December 2023.

Closure of register

Notice is hereby given that the Register of Members will be closed on 24th November 2023 for the purpose of preparation of a dividend list. Documents for registration, which should be received by 4.30 p.m., on 24th November 2023, may be hand delivered or posted to the Share Registrars at the following address:

C & R Group, 1KM Place, Tower B, 1st Floor, 5th Ngong Avenue, off Bishops Road P.O. Box 8484-00100, GPO, Nairobi.

Financial Statements

In accordance with the Company's Articles of Association, a copy of the Report and Financial Statements for the year ended 31 July 2023 may be viewed and/or downloaded from the Company's website (www.carbacid.com). The Annual Report and Financial Statements may be obtained from the Registered Office, ALN House, Eldama Ravine Close, off Eldama Ravine Road, Westlands.

Annual General Meeting

The Annual General Meeting of the Company will be held in a hybrid format via electronic means on Friday 15th December 2023. The Notice, Agenda and Log in details will be circulated in due course.

By Order of the Board,

C Nyukuri, CPS (K)

Secretary

Carbacid Investments plc

24th October 2023

These results are an extract from the consolidated financial statements of Carbacid Investments plc for the year ended 31 July 2023, as audited by RSM Eastern Africa LLP, and on which an unqualified opinion has been issued.



THE COUNTY ASSEMBLY OF KIRINYAGA

NOTICE OF APPROVAL HEARING

PURSUANT to Section 7(4) and Section 7(5) of the Public Appointments (County Assemblies Approval) Act, 2017 IT IS NOTIFIED for the information of the general public and the candidates that the Committee on Lands, Physical Planning and Urban Development shall on Thursday, 2nd November 2023 conduct approval hearings for the following candidates nominated as members of the Kerugoya-Kutus Municipality Board: -

Name	Time
Mr. John Mwangi Ndambiri	10.00 a.m.
Ms. Lucy Kabeti Mbogo	11.00 a.m.
Mr. Erick Muthili Kinyua	12.00 Noon
Ms. Mary Muthoni Cooper	1.00 pm

The approval hearing shall be held at the County Assembly of Kirinyaga Chambers in Kerugoya.

The candidates are required to collect the vetting questionnaire from the Office of the Clerk of the County Assembly or download it at assembly.kirinyaga.go.ke and should return the questionnaire together with the documents listed below on or before 1st November 2023 at 5.00 p.m.

- (i) Copies of ID card or Passport
- (ii) Curriculum vitae of the candidate and relevant supporting documents;
- (iii) Clearance from: Kenya Revenue Authority, National Police Service, Higher Education Loans Board, Credit Reference Bureau and Ethics and Anti-Corruption Commission

The candidates are advised to bring the originals of the above mentioned documents on the day of the approval hearing.

Any person contesting the suitability of the candidate to hold the office to which the candidate has been nominated may submit a written statement on oath to the Clerk using the address below

The Clerk,
County Assembly of Kirinyaga
P.O Box 55-10300
KERUGOYA

OR
If hand delivered, to the Office of the Clerk of the County Assembly of Kirinyaga at the County Assembly Chambers, Kerugoya not later than 5.00 p.m. on 1st November, 2023.

Kamau Aidi
Clerk, County Assembly of Kirinyaga



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY THIRTEENTH PARLIAMENT - SECOND SESSION (2023)

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION

AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE PUBLIC PARTICIPATION BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 52 OF 2023)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

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NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bill to the Committee on Parliamentary Broadcasting and Library.

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/the-national-assembly/house-business/bills

The memoranda may be forwarded to the **Clerk of the National Assembly**, P.O. Box 41842-00100, Nairobi; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to cna@parliament.go.ke to be received on or before **Monday, 6th November 2023 at 5.00 p.m.**

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

25th October, 2023

"For the Welfare of Society and the just Government of the People"

NEW APPOINTMENTS



The Institute of Certified Public Accountants of Kenya (ICPAK) is the statutory body of accountants with the mandate to develop and regulate the accountancy profession in Kenya.

The Institute recently conducted its national Council elections and has a new Chairman, Vice Chairman, and Council Member. The Institute's Council along with its membership and staff congratulate CPA Philip Kakai and CPA Prof. Elizabeth Kalunda-Mvuri on their election as Chairman and Vice Chairman of the Institute respectively. Additionally, we would like to acknowledge and congratulate CPA Olive Gitau on her election to the Council.



CPA Philip Kakai,
Chairman, ICPAK



CPA Prof. Elizabeth
Kalunda,
Vice Chairman, ICPAK



CPA Dr. Grace Kamau,
CEO, ICPAK

NEWLY ELECTED COUNCIL MEMBER



CPA Olive Gitau

OTHER COUNCIL MEMBERS



FCPA Prof. Nicholas
Letting



FCPA Georgina
Malombe



FCPA Hesbon
Omollo



CPA Anne Wangeci



CPA Jona Wala



CPA Matthew
Mukisu



CPA Risper Olick



THE COUNTY ASSEMBLY OF KIRINYAGA

NOTICE OF APPROVAL HEARING

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- Clearance from: Kenya Revenue Authority, National Police Service, Higher Education Loans Board, Credit Reference Bureau and Ethics and Anti-Corruption Commission

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KERUGOYA

OR
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Kamau Aidi
Clerk, County Assembly of Kirinyaga



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - SECOND SESSION (2023)

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION

AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE PUBLIC PARTICIPATION BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 52 OF 2023)

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S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
25th October, 2023

"For the Welfare of Society and the just Government of the People"

NEW APPOINTMENTS



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CPA Philip Kakai,
Chairman, ICPAK



CPA Prof. Elizabeth
Kalunda,
Vice Chairman, ICPAK



CPA Dr. Grace Kamau,
CEO, ICPAK

NEWLY ELECTED COUNCIL MEMBER



CPA Olive Gitau

OTHER COUNCIL MEMBERS



FCPA Prof. Nicholas
Letting



FCPA Georgina
Malombe



FCPA Hesbon
Omollo



CPA Anne Wangeci



CPA Jona Wala



CPA Matthew
Mukisu



CPA Risper Olick

**ANNEXURE 4: LETTERS INVITING THE
STAKEHOLDERS TO SUBMIT
MEMORANDA**



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

Ref: NA/DAA&GPC/PB&L/2024(01)

30th January, 2024

Dr. Chris K. Kiptoo, CBS
Principal Secretary
The National Treasury
Treasury Buildings, Harambee Avenue
NAIROBI

Hon. Shadrack J. Mose
The Solicitor General
The State Law Office
Sheria House, Harambee Avenue
NARIOBI

Mr. Joash Dache, MBS
Chief Executive Officer/Commission Secretary
Kenya Law Reform Commission
Reinsurance Plaza, 3rd Floor, Taifa Road
NAIROBI

Dear

**RE: MEETING WITH THE COMMITTEE ON PARLIAMENTARY
BROADCASTING AND LIBRARY TO CONSIDER PUBLIC PARTICIPATION
BILL, 2023 (National Assembly Bill No. 52 of 2023)**

The Committee on Parliamentary Broadcasting and Library is established pursuant to Standing Order 212D of the National Assembly Standing Orders, and mandated to *inter alia*, advise the House on matters related to public participation.

The Public Participation Bill, 2023 was read a First Time on Thursday, 12th October 2023 and referred to Committee for consideration and reporting to the House. Pursuant to the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee is in the process of carrying out public participation on the said bill.

In this regard, the Committee has resolved to invite you as one of the key stakeholder for a meeting to submit your memoranda on the bill (copy attached). The meeting will be held on **Wednesday 7th February, 2024** in the **Mini-Chamber, County Hall, Parliament Buildings** as per the schedule below-

No.	Institution	Time
1.	The National Treasury	10.30am – 11.30am
2.	The State Law Office	11.30am – 12.30pm
3.	Kenya Law Reform Commission	12.30pm – 1.30pm

Copies of the bill may be obtained from the Parliamentary website:
www.parliament.go.ke/the-national-assembly/house-business/bills.

Our liaison officers on this matter are **Ms. Ella Kendi**, who may be contacted on Tel. No. 0716 698 499 or email address ella.kendi@parliament.go.ke and **Ms. Fidlizah Mwagogo** on Tel. No. 0712994726 or email address fidlizah.mwagogo@parliament.go.ke.

Yours

JEREMIAH NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to:

Prof. Njuguna Ndung'u, CBS
The Cabinet Secretary
The National Treasury and Economic Planning
Treasury Buildings
Harambee Avenue
NAIROBI



Hon. Justin B.N. Muturi, EGH
The Attorney General
The State Law Office
Sheria House, Harambee Avenue
NAIROBI

**ANNEXURE 5: COPIES OF THE MEMORANDA
SUBMITTED BY THE
STAKEHOLDERS**

07/12/24

please
note
that

07/2/24

8.

7/2/24



Telegraphic Address: 22921
Finance – Nairobi
FAX NO. 310833
Telephone: 2252299

THE NATIONAL TREASURY
P O BOX 30007 - 00100
NAIROBI

Ref: NT/LEGAL/761 TY

Date: 5th February, 2024

Clerk of the National Assembly
P.O. Box 41842-00100
Nairobi

Dear, Sir,

**RE: MEETING WITH THE COMMITTEE ON PARLIAMENTARY
BROADCASTING AND LIBRARY TO CONSIDER PUBLIC
PARTICIPATION BILL, 2023 (National Assembly Bill No. 52 of 2023)**

Reference is made to a letter Ref. NA/DAA&GPC/PB&L/2024(01) dated 30th January, 2024 requesting the National Treasury for input on the National Assembly Bill No. 52 of 2023.

This is therefore, to submit our comments as requested.

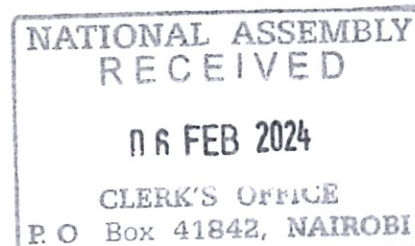
Yours.

Sincerely

~~August~~ August

Samson P. Wangusi, OGW

PRINCIPAL ADMINISTRATIVE SECRETARY
FOR PRINCIPAL SECRETARY/NATIONAL TREASURY



07 FEB 2024

(i) D/AAGPC
Please deal.
[Signature]

(ii) GZHA
Please
clear
FAA
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(iii) 1. Enmer
2. Lucy
Please
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FAA
15/2/24



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

Telegraphic Address: 22921

FINANCE - NAIROBI

Fax No. 315779

Telephone: 2252299

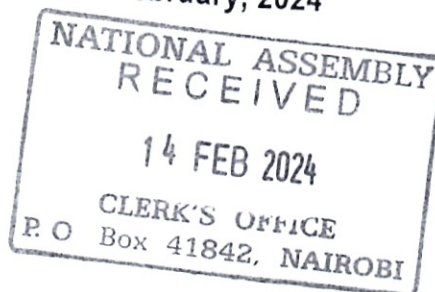
When replying please quote

Ref: DV/ES.1123/23/01/A/ (17)

Mr. Samuel Njoroge, CBS
Clerk of The National Assembly
Main Parliament Building
NAIROBI

THE NATIONAL TREASURY
P.O. Box 30007 - 00100
NAIROBI
KENYA

Date: 12th February, 2024



Dear

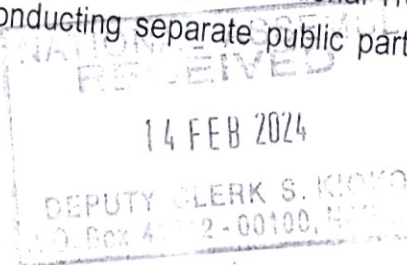
MEETING WITH THE COMMITTEE ON PARLIAMENTARY BROADCASTING AND
LIBRARY TO CONSIDER PUBLIC PARTICIPATION BILL, 2023 (National Assembly Bill
No. 52 of 2023)

This is in reference to your letter No.NA/DAA&GPC/PB&L/2024 (01) dated 30th January, 2024 on the above subject.

The National Treasury has reviewed your request for Memoranda on the Public Participation Bill, 2023 and observes that;

- 1) The Bill appropriately provides comprehensive guidance to State Organs, Public Offices and the General Public on conduct of public participation including the requirement on each responsible Authority to budget for expenditure in the Annual Estimates and to report on activities and outcomes of Public Participation. Clause 11 of the Bill requires a state organ or public office to provide the necessary resources and include in its annual estimates provisions for expenses for purposed of undertaking public participation. We also note that clause 5(b) indicates that the scope of public participation extends to budgeting and financial management. Taking cognizance of the importance of public participation, we note that budgeting as opposed to policy formulation and law making is an annual process for all Ministries, Departments and Agencies. In this regard, we recommend that state organs and public offices can benefit and or ride on the public participation on the budget process usually conducted by the National Treasury as a cost saving measure instead of each entity conducting separate public participation on the budget.

10 FEB 2024





REPUBLIC OF KENYA
THE NATIONAL TREASURY & ECONOMIC PLANNING

1. It is noted that the Bill only applies to the National Government and not the County Government. We propose that considering that Counties have developed their respective public participation laws, there is need for this Bill to recognise the existence of the public participation laws and ensure that this Bill serves as an overarching national law. Further, there is need to ensure that the County specific laws align with the national law. To carter for this proposal, we propose that the following section should be added:

‘(1) This Act serves as a national law and applies to both the National Government and the Counties. All Public Participation laws enacted by County Governments pursuant to Article 196 of the Constitution, shall within six (6) months of commencement of this Act, be aligned with the provisions of this Act.

(2) Where there is a conflict between the provisions of this Act and any other written law, the provisions of this Act shall prevail’.

S/NO	Reference/Section	Issue	Recommendation/Proposal
1.	Title	Constitutional provisions on public participation	add Article 69(1)(d).
2.	Section 4- Objects of the Act	Section 4(a) add Article 69(1)(d).	Section 4(a) add Article 69(1)(d). This section encourages public participation on environment
3.	Section 6 - conduct of public participation	A state organ or public officer shall provide reasonable and meaningful	We note the threshold for reasonable is defined whereas meaningful is not defined the word ‘meaningful’ should be defined or a clear threshold provided

S/NO	Reference/Section	Issue	Recommendation/Proposal
		opportunities for public participation	
4.	Section 8 -		Need to include the Accounting Officers of the different agencies and parastatals in Government.
5.	Section 9(4) - development of specific public participation guidelines	specific public participation guidelines developed by a responsible authority	it is noted that the Bill seems is a national law as it includes both national and county government agencies. There are some country governments such as Nairobi County, Elgeyo Marakwet, already have Public Participation laws. There is need for a provision on the alignment of the county specific laws with the national law. We propose amending Section 9(4) to include provide that <i>'where there is a conflict between the provisions of this Act and any other written law, the provisions of this Act shall prevail'</i> .
6.			There is need for an institutional arrangement within the responsible ministry and the County Government that monitors the implementation of this law.
SCHEDULE GENERAL PUBLIC PARTICIPATION GUIDELINES S.9 (2)			

S/NO	Reference/Section	Issue	Recommendation/Proposal
7.	1. Factors to be considered		add identify people to be affected or likely to be affected.
8.	2	A State Organ or public office shall give the public adequate notice to make their input on the issue	the words '<i>adequate notice</i>' are ambiguous. There is need to provide the notice period by deleting the words '<i>adequate notice</i>' and replace with the words '<i>at least twenty-one (21) days' notice</i>'. In 2(2) add '<i>social media handles</i>', so as to be able to reach the youth.
9.	2(2)		In 2(2) add ' <i>social media handles</i> ', so as to be able to reach the youth.
10.	4		In 4, delete the words ' <i>adequate notice</i> ' and replace with ' <i>at least twenty-one (21) days' notice</i> '.
11.	5-Acess to public information		In 5(1)(a), we propose that you add ' <i>social media handlers</i> '

(1) D/AASC
Please deal.
08/02/24



OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

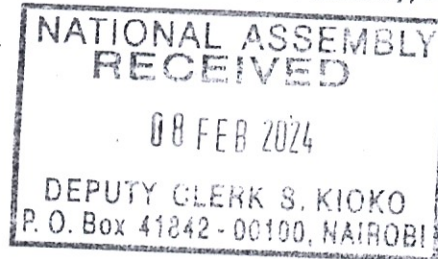
(1) B/LA
Please deal
08/12/24

(1) i. G. M. J. J.
a. Lucy
Please note
08/12/24

Our Ref: AG/LDD/5095/1/28
Your Ref: NA/DAA&GPC/PB&L/2024(01)

7th February, 2024

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
Clerk's Chambers, National Assembly
Parliament Buildings
P. O. Box 41842-00100
NAIROBI



RE: MEETING WITH THE COMMITTEE ON PARLIAMENTARY BROADCASTING AND
LIBRARY PUBLIC PARTICIPATION BILL, 2023 BY HON. DANIEL EPUYO
NANOK, (NATIONAL ASSEMBLY BILL NO.52 OF 2023)

Reference is made to your letter under Ref. NA/DAA&GPC/PB&L/2024(01) dated 30th January, 2024 requesting our comments on the proposed Public Participation Bill, 2023, sponsored by Hon. Daniel Epuyo Nanok, MP, Chair of the Committee on Parliamentary Broadcasting and Library, in a meeting scheduled for the 7th February, 2024 in the Mini-Chamber, County Hall, Parliament Buildings.

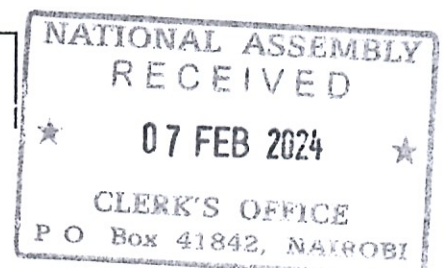
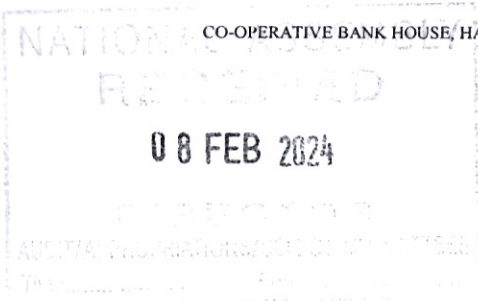
We have noted the contents of your letter and the accompanying Bill and note as follows—

1. Public participation in Kenya is governed by the Constitution and several Acts of Parliament including the County Governments Act, 2012, Statutory Instruments Act, 2013, and the Public Finance Management Act, 2012.
2. The provisions of the Constitution that provide for public participation include:
 - (a) Article 10 (2) (a) which provides that the national values and principles of governance include; democracy and participation of the people;
 - (b) Article 69 (1) (d) which provides that the State should encourage public participation in the management, protection, and conservation of the environment;
 - (c) Article 118(1) which provides that Parliament should openly conduct its business, and its sittings and those of its committees should be held in public; and facilitate public participation and involvement in the legislative and other business of Parliament and its committees;
 - (d) Article 174 (c) which provides that the objects of devolution are to give powers of self-governance to the people and enhance their participation in the exercise of such powers in decision-making;
 - (e) Article 184 (1) (c) which provides that national legislation should provide for the governance and management of urban areas and cities and should, in

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DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

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particular provide for participation by residents in the governance of urban areas and cities;

- (f) Article 196 (1) which states that a County Assembly should openly conduct its business, and hold its sittings and those of its committees, in public; and facilitate public participation and involvement in the legislative and other business of the assembly and its committees;
- (g) Article 201 (a) which provides that there should be openness and accountability, including public participation in financial matters;
- (h) Article 232 (1) (d) which provides that the values and principles of public service include the involvement of the people in the process of policymaking and transparency and provision to the public of timely and accurate information; and
- (i) Paragraph 14 of Part 2 of the Fourth Schedule which states that the functions and powers of the county government are to coordinate and ensure the participation of communities in governance; and that Counties are also to assist communities to develop the administrative capacity to enhance their exercise of power and participation in governance at the local level.

We also wish to bring to your attention that the Cabinet approved the Kenya Public Participation Policy, 2023 on the 16th May, 2023. The objectives of the Policy are to set standards for effective public participation and to establish a framework for the management and coordination of public participation in Kenya. *A copy is enclosed for ease of reference.*

The Policy sets out overarching comprehensive and coherent standards for active and meaningful public participation for the national and county governments and provides a framework for the coordination of public participation in order to fulfil constitutional requirements on citizen engagement in development and governance processes in the country.

The Policy has nine specific objectives which affect both levels of government, namely, to:

- (a) ensure citizens continually access timely information on public issues in a language and format that is easy to understand;
- (b) provide a framework for coordination and enabling environment for agencies involved in civic education;
- (c) undertake coordinated and integrated capacity building towards empowering responsible citizens and public institutions;
- (d) promote effective public participation in planning, budgeting and implementation of approved plans and budgets;
- (e) promote effective participation of minorities and marginalized groups at all levels;
- (f) guarantee adequate, secure and sustainable funding for public participation;
- (g) promote well-resourced, updated and effectively implemented monitoring, evaluation and learning systems for public participation;
- (h) promote responsive, functional and timely feedback and reporting mechanisms in order to build confidence in public participation process and;
- (i) promote effective handling of complaints.

In view of the foregoing, we wish to advise as follows---

1. In the definition of the Cabinet Secretary, the sponsor of the Bill may consider revising the definition to align it with the Kenya Public Participation Policy

which identifies this Office as the lead agency in the implementation of the Policy and in collaboration with the Ministry responsible for matters related to devolution, is mandated to establish a multi sectoral co-ordination framework for ensuring effective public participation.

2. The sponsor of the Bill may consider aligning the definition of "public participation" set out in the Kenya Policy on Public Participation which is—

"public participation" means the process by which citizens, as individuals, groups or communities take part in the conduct of public affairs, interact with the state and other non-state actors to influence decisions, policies, programs, legislation and provide oversight in service delivery, development and other matters concerning their governance and public interest either directly or indirectly through freely chosen representatives".

3. The sponsor of the Bill may consider harmonising the responsibilities of the Cabinet Secretary under clause 14 and those of responsible authorities under clause 9. Clause 9 mandates responsible authorities to develop guidelines for undertaking public participation in their institutions while clause 14 mandates the Cabinet Secretary to develop regulations for implementing the Bill. Noting that the Statutory Instruments Act, 2013, defines a statutory instrument to include both regulations and guidelines, we propose for clause 9 to be redrafted to provide for the responsible authorities to develop operational or administrative guidelines.
4. The sponsor of the Bill may consider including a clause on dispute resolution. The policy recognises that the various entities established under the Constitution and other legislation should handle public complaints and recommends the strengthening of these institutions to enable them carry out their functions optimally.
5. The sponsor of the Bill may consider harmonising the provisions of the Bill with the Kenya Public Participation Policy, specifically the co-ordinating mechanism for Ministries, Departments and Agencies (MDAs), county governments and non-state actors in facilitating effective public participation and a monitoring and evaluation framework to determine the effectiveness of the public participation process. The approach adopted by the Office of the Prime Cabinet Secretary and this Office in this regard was the establishment of the Office of the Registrar of Public Participation who develops and co-ordinates the regulatory framework for public participation, monitors public participation activities, and reports to Parliament on the effectiveness of public participation processes by State organs.

We trust that this is in order.


Maryann Njau-Kimani, EBS
SENIOR DEPUTY SOLICITOR GENERAL
FOR: SOLICITOR-GENERAL

Copy to: Hon. J. B. N. Muturi EGH
Attorney-General

OFFICE OF THE ATTORNEY GENERAL & DEPARTMENT OF JUSTICE



DATE: 7TH FEBRUARY, 2024

TO: THE CHAIRPERSON

THE COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY

RE: MEETING WITH THE COMMITTEE ON PARLIAMENTARY
BROADCASTING AND LIBRARY PUBLIC PARTICIPATION BILL, 2023 BY
HON. DANIEL EPUYO NANOK, (NATIONAL ASSEMBLY BILL NO.52 OF
2023)

The National Assembly *vide* a letter under Ref No: NA/DAA&GPC/PB&L/2024(01)
dated 30th January, 2024 requested our comments on the proposed Public

Participation Bill, 2023, sponsored by **Hon. Daniel Epuyo Nanok**, MP, Chair of the Committee on Parliamentary Broadcasting and Library, in a meeting scheduled for the 7th February, 2024 in the Mini-Chamber, County Hall, Parliament Buildings.

We have noted the content of the communication and we wish to respond as follows—

1. Public participation in Kenya is governed by the Constitution and several Acts of Parliament including the County Governments Act, 2012, Statutory Instruments Act, 2013, and the Public Finance Management Act, 2012.
2. The provisions of the Constitution that provide for public participation include:
 - (a) Article 10 (2) (a) which provides that the national values and principles of governance include; democracy and participation of the people;

- (b) Article 69 (1) (d) which provides that the State should encourage public participation in the management, protection, and conservation of the environment;
- (c) Article 118(1) which provides that Parliament should openly conduct its business, and its sittings and those of its committees should be held in public; and facilitate public participation and involvement in the legislative and other business of Parliament and its committees;
- (d) Article 174 (c) which provides that the objects of devolution are to give powers of self-governance to the people and enhance their participation in the exercise of such powers in decision-making;
- (e) Article 184 (1) (c) which provides that national legislation should provide for the governance and management of urban areas and cities and should, in particular provide for participation by residents in the governance of urban areas and cities;
- (f) Article 196 (1) which states that a County Assembly should openly conduct its business, and hold its sittings and those of its committees, in public; and facilitate public participation and involvement in the legislative and other business of the assembly and its committees;

- (g) Article 201 (a) which provides that there should be openness and accountability, including public participation in financial matters;
 - (h) Article 232 (1) (d) which provides that the values and principles of public service include the involvement of the people in the process of policymaking and transparency and provision to the public of timely and accurate information; an
 - (i) Paragraph 14 of Part 2 of the Fourth Schedule which states that the functions and powers of the county government are to coordinate and ensure the participation of communities in governance; and that Counties are also to assist communities to develop the administrative capacity to enhance their exercise of power and participation in governance at the local level.
3. We have also reviewed various court cases that dealt with the question of public participation and note that the cases recommend public participation should take into account the following key principles—
- (a) **Inclusivity:** Public participation should be open to all individuals and groups who are affected by or interested in the issue at hand. It should actively seek to include diverse voices and perspectives, including those of marginalized or vulnerable communities.

- (b) **Transparency:** The process of public participation should be transparent, with clear information provided about the issue, the decision-making process, and the outcomes.
- (c) **Accessibility:** Information and opportunities for participation should be accessible to all, regardless of socioeconomic status, education, or physical abilities. This includes providing materials in multiple languages and formats and ensuring physical accessibility.
- (d) **Timing:** Public participation should be carried out early in the decision-making process when options are still open for discussion and consideration. It should also be ongoing and not limited to one-time events, allowing for continuous feedback and adaptation.
- (e) **Reasonableness:** There is need to ensure that the public participation undertaken is acceptable to a reasonable person. The reasonableness of the public participation is determined from time to time based on individual circumstances as there is no standard way of carrying out public participation.
- (f) **Meaningful:** Public participation should be real and not a mere formality undertaken as a matter of course.

(g) **Effectiveness:** The public participation carried out should be able to achieve a desired outcome.

(h) **Sufficiency of Information:** Participants should have access to sufficient and accurate information about the issue to make informed contributions. This may include providing educational materials, expert briefings, and access to relevant data.

(i) **Legal and Ethical Frameworks:** Public participation should be guided by legal and ethical frameworks that protect the rights of participants and ensure the integrity of the process.

4. We also wish to bring to your attention that the **Cabinet** approved the Kenya Public Participation Policy, 2023 on the **16th May, 2023**. The Kenya Public Participation Policy (Sessional Paper No. 3 of 2023) aligned with the Constitution, establishes comprehensive standards for citizen engagement in national and county governance. It provides a framework to coordinate public participation and fulfil constitutional requirements for development and governance processes. The objectives of the Policy are to set standards for effective public participation and to establish a framework for

the management and coordination of public participation in Kenya. *A copy is enclosed for ease of reference.*

5. The Policy sets out overarching comprehensive and coherent standards for active and meaningful public participation for the national and county governments and provides a framework for the coordination of public participation in order to fulfil constitutional requirements on citizen engagement in development and governance processes in the country.
6. The Public Participation Bill of 2023 arrives at a critical juncture, building upon the foundation laid by the Kenya Policy on Public Participation. While the Policy sets guiding principles, the Bill offers a crucial step forward by translating those principles into concrete legal requirements and enforcement mechanisms.
7. The Policy has nine specific objectives which affect both levels of government, namely, to:
 - (a) ensure citizens continually access timely information on public issues in a language and format that is easy to understand;
 - (b) provide a framework for coordination and enabling environment for agencies involved in civic education;

- (c) undertake coordinated and integrated capacity building towards empowering responsible citizens and public institutions;
- (d) promote effective public participation in planning, budgeting and implementation of approved plans and budgets;
- (e) promote effective participation of minorities and marginalized groups at all levels;
- (f) guarantee adequate, secure and sustainable funding for public participation;
- (g) promote well-resourced, updated and effectively implemented monitoring, evaluation and learning systems for public participation;
- (h) promote responsive, functional and timely feedback and reporting mechanisms in order to build confidence in public participation process and;
- (i) promote effective handling of complaints.

In view of the foregoing, we wish to advise as follows—

8. In the definition of the Cabinet Secretary, the sponsor of the Bill may consider revising the definition to align it with the Kenya Public

Participation Policy which identifies this Office as the lead agency in the implementation of the Policy and in collaboration with the Ministry responsible for matters related to devolution, is mandated to establish a multi sectoral co-ordination framework for ensuring effective public participation. Further, Court rulings have established that the Attorney General is not a Cabinet Secretary, and their role doesn't involve ministerial responsibilities typically associated with the title.

9. To address this discrepancy, it's crucial to remove the "Cabinet Secretary" definition from Clause 2. Instead, the term "Attorney General" should stand alone. This aligns with Article 156 of the Constitution, the Office of the Attorney General Act No 49 of 2012, and the Interpretation and General Provisions Act, which clearly outline the Attorney General's specific role and responsibilities. By making this change, we ensure accurate and consistent terminology within the legislation.

10. The sponsor of the Bill may consider aligning the definition of "public participation" set out in the Kenya Policy on Public Participation which is—

"public participation" means the process by which citizens, as individuals, groups or communities take part in the conduct of public affairs, interact with the state and other non-state actors to influence

decisions, policies, programs, legislation and provide oversight in service delivery, development and other matters concerning their governance and public interest either directly or indirectly through freely chosen representatives”.

11. The sponsor of the Bill may consider including the definition of the following terms—

(a) Individuals: Any citizen or resident of the country, regardless of age, gender, ethnicity, social status, or any other differentiating factor.

(b) Groups of individuals: This can include, but is not limited to, communities, associations, organizations, and social movements.

(c) Legal persons: This includes entities recognized by law with legal rights and responsibilities, such as companies, non-profit organizations, and trade unions.

12. The sponsor of the Bill may consider expanding clause 12 of the Bill, by including in the annual reports to Parliament or the County Assemblies, information on:

- (a) **Public Notification Mechanisms:** Understanding how the public is informed about opportunities to participate is crucial for assessing the inclusivity and reach of the process. This information helps identify potential gaps and improve notification strategies.
- (b) **Public Participation Budget:** Disclosing the budget allocated for public participation promotes transparency in resource allocation and allows evaluation of the resources invested in engagement efforts.
- (c) **Disaggregated Participation Data:** Collecting data on participants disaggregated by sex, county, age, and disability allows for analysis of inclusivity and identification of groups potentially underrepresented in the process. This data is crucial for designing targeted outreach, and ensuring participation reflects the diversity of the population.
- (d) **Modalities of Engagement:** Specifying the various methods used to engage the public (e.g., surveys, public hearings, online forums, citizen juries) provides valuable insights into the effectiveness and reach of different approaches. This allows for comparative analysis and tailoring future engagement strategies to specific contexts and audiences. This enhanced transparency measure will help ensure accountability, monitoring and effectiveness of public participation efforts.

13. The sponsor of the Bill may consider harmonising the responsibilities of the Cabinet Secretary under clause 14 and those of responsible authorities under clause 9. Clause 9 mandates responsible authorities to develop guidelines for undertaking public participation in their institutions while clause 14 mandates the Cabinet Secretary to develop regulations for implementing the Bill. Noting that the Statutory Instruments Act, 2013, defines a statutory instrument to include both regulations and guidelines, we propose for clause 9 to be redrafted to provide for the responsible authorities to develop operational or administrative guidelines.
14. The sponsor of the Bill may consider including a clause on dispute resolution. The policy recognises that the various entities established under the Constitution and other legislation should handle public complaints and recommends the strengthening of these institutions to enable them carry out their functions optimally.
15. The sponsor of the Bill may consider including a clause under the Schedule on General Public Participation Guidelines on Non-discrimination and Accommodation. This ensures meaningful participation of all societal actors.
16. The proposed law should mandate the deliberate inclusion of diverse groups, particularly those most vulnerable to discrimination and historical

exclusion, such as minorities, marginalized communities, women, youth, older adults, and children. In this regard insert a clause to read;

"A state organ or public office shall incorporate the perspectives and participation of diverse groups, particularly those most vulnerable to discrimination and historical exclusion, such as minorities, marginalized communities, women, youth, older adults, people with disabilities, and children".

17. The sponsor of the Bill may consider harmonising the provisions of the Bill with the Kenya Public Participation Policy, specifically the co-ordinating mechanism for Ministries, Departments and Agencies (MDAs), county governments and non-state actors in facilitating effective public participation and a monitoring and evaluation framework to determine the effectiveness of the public participation process.

18. We propose the establishment of the Office of the Registrar of Public Participation who develops and co-ordinates the regulatory framework for public participation, monitors public participation activities, and reports to Parliament on the effectiveness of public participation processes by State organs or the establishment of an independent oversight body with diverse representation. This body should draw members from relevant

government entities, including the Kenya National Commission on Human Rights (KNCHR) and one or two civil society organizations with recognized expertise in public participation.

19. This independent oversight mechanism would facilitate coordination, transparency, and accountability in public participation efforts. By providing expert guidance and monitoring compliance, it would ultimately encourage responsible decision-making that reflects the diverse perspectives of all stakeholders.

20. The body's core functions may be—

- (a) Monitoring compliance with established public participation standards.
- (b) Providing expert advice to government agencies and civil society on effective public participation practices.
- (c) Issuing public reports on compliance issues, highlighting identified strengths and weaknesses in public participation processes.

21. The Public Participation Bill is not just complementary to the existing Policy; it's a transformative leap forward. By establishing a legal framework with clear expectations and consequences, the Bill empowers citizens, strengthens accountability, and ultimately fosters a more inclusive and

responsive democratic society. We urge the full and timely passage of this crucial legislation.

Submitted by the Office of the Attorney General and Department of Justice.

3



National Gender and Equality Commission

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NATIONAL GENDER AND EQUALITY COMMISSION

Ref. No. NGECS/NAS/005/VOL.III (127)

6th November 2023

Mr. Samuel Njoroge

Clerk of the National Assembly

Clerk's Chambers

Parliament Building

P.O. Box 41842-00100

NAIROBI

cna@parliament.go.ke

Dear Mr. Njoroge,

MEMORANDUM ON THE PUBLIC PARTICIPATION BILL, 2023 (NATIONAL ASSEMBLY BILL NO 52 OF 2023)

Reference is made to the call for submission of memoranda on the Public Participation Bill, 2023 (National Assembly Bills No. 52 of 2023).

The National Gender and Equality Commission (NGEC) is a Constitutional Commission with the mandate of promoting and ensuring gender equality, principles of equality and non-discrimination for all persons in Kenya, with a focus on Special Interest Groups (SIGs) who include women, children, Persons with Disabilities (PWDs), youth, older members of society and minority and marginalized groups.

Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 2011 mandates the Commission to, '*monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions*';

In line with its mandate, the Commission presents the attached memorandum analyzing the proposed Bill and making proposals where necessary.

Yours sincerely,

Betty Sungura-Nyabuto MBS
COMMISSION SECRETARY/ CEO

Encl.

"Gender Equality and Non-Discrimination"



MEMORANDUM ON THE PUBLIC PARTICIPATION BILL 2023

S/NO	PROVISION	PROPOSAL FOR AMENDMENTS	RATIONALE/JUSTIFICATION
INTERPRETATIONS			
1.	i. Proposed interpretations	Propose to interpret the following terms "Access" includes access to Information and services, fittings, amenities, Build environment, and infrastructure.	For clarity purposes
		"Access to information" includes braille, sign language, large texts, websites, and local language	For clarity purposes.
	ii. "Specific guidelines" means the specific public participation guidelines developed by a responsible authority under section 8	Amend by substituting "section 8" with "section 9"	Section 8 is on the determination of responsible Authority and 9 on the development of specific public Participation guidelines.
2.	Proposed new part V MISCELLANEOUS	Amend by inserting a new miscellaneous part V- Clause 15 on County Legislation as follows-; 15. County Legislation A county government shall enact county-specific legislation generally for the better carrying out of the purposes and provisions of this Act	Section 115. County Government Act. Speaks to the same as follows-; Public participation in county planning (1) Public participation in the county planning processes shall be mandatory and be facilitated through—

			(a) mechanisms provided for in Part VIII of this Act, and (b) provision to the public of clear and unambiguous information on any matter under consideration in the planning process, including— (i) clear strategic environmental assessments; (ii) clear environmental impact assessment reports, (iii) expected development outcomes; and (iv) development options and their cost implications (2) Each county assembly shall develop laws and regulations giving effect to the requirement for effective citizen participation in development planning and performance management within the county and such laws and guidelines shall adhere to minimum national requirements.
SCHEDULE GENERAL PUBLIC PARTICIPATION GUIDELINES			
3.	Paragraph 2- notice (2) For purposes of sub-paragraph (1), a state organ or public office shall establish mechanisms to enable the widest reach which may include publication of notices in- (a) television stations; (b) information communication technology	Amend paragraph 2 by inserting the following additional items under Notice Requirements (g) Religious gatherings (h) Notice Boards (i) Social media (j) Markets	The proposed items are the most popular mechanisms of communication for the youth and the citizens at the grass roots.

	centres; (c) websites; (d) community radio stations, (e) public meetings; (f) newspapers; or (g) any other media that may be prescribed		
	Paragraph 3- Access to Public Participation Processes (1) A state organ or public office shall ensure that the public and entities have fair and equal access to the public participation process and the opportunity to give views on the intended decision. (2) A state organ or public office shall take all necessary measures to ensure the participation of persons with disabilities in the public participation processes (3) Where the targeted participants are not conversant in the national languages, the state organ or public office shall provide an interpreter for those participants who wish to make their remarks in their local language.	a Amend paragraph (2) to insert after the phrase "disabilities" the following "and all various categories of vulnerabilities" b. Amend paragraph (3) to insert after "local language" the following "and sign language"	The proposal by the Commission is premised on the fact that there are more vulnerable special interest groups that also need reasonable accommodation including the elderly and expectant mothers among others Sign language interpretation is for persons with hearing impairments

		c Amend paragraph 3 by inserting the following additional sub-paragraph 4 as follows- (4) The state organ or public office shall take measures to ensure the venue, the infrastructure and build environment is accessible	The proposed provision is to ensure that all citizens can access the venue and all the facilities of the participation without any difficulties or limitations.
	Paragraph 4 Adequate Notice A state organ or public office shall give the public adequate notice to make their input on the issue	Amend paragraph 4 by substituting the phrase "adequate" with at least "ten days" Amend by renumbering the provision as (1) and then insert a new sub-paragraph (2) as follows- (2) The state organ or public Office shall ensure that there are no more than two matters at any given time requiring the public to participate	The amendments proposed in this section will ensure that the public have adequate time to submit meaningfully to the matters requiring participation. Instances have been witnessed where the public are required to participate in several matters in a very limited time and so have to rush through with preparing submissions just to meet deadlines A case in point is of the 4 current other Bills from the National Assembly plus this instant one making a total of 5 Bills that need submissions within the same deadline time.
	Paragraph 5 Access to information for public participation.		

5. (1) A state organ or public office shall — (a) publish and distribute the documents for consideration as widely as possible using the available means, including providing hard copies, radio and television advertisements, websites or community radio announcements; and (b) ensure that the documents are published and distributed in a language and form that can be used by the public. (2) A person may request for information relating to an issue under consideration. (3) A request for information under subparagraph(2)— (a) shall be addressed to the head of the state organ or public office or such other person as the state organ or public office may designate for that purpose; (b) may, where the authority incurs expense in providing the information, be subject to payment of a reasonable fee; and (c) may be subject to confidentiality requirements of the state organ or public office. (4) Subject to the provisions of Article 35 of the Constitution and the Access to Information Act and the Data Protection Act	a. Amend 5(1)(a) by inserting after the phrase “announcements” the following “and if necessary educate and sensitise the public on the subject matter of the public participation. b. Amend by deleting (b) without any replacement	The proposal to sensitise and educate the public on a subject matter is to equip them with the necessary information that will enable them participate meaningfully. To participate from an informed point of view. The reason why there could be poor participation could be because of ignorance or lack of knowledge of the subject matter Clause 11. States that a state organ or public office shall provide the necessary resources under this Act and shall include in its annual estimates provisions for expenses for purposes of undertaking public participation. It is not in order to charge a fee for providing information for purposes of participating in a subject matter.
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	, a state organ or public office may decline to give information to an applicant where— (a) the request is unreasonable in the circumstances; or (b) the applicant fails to satisfy any confidentiality requirements imposed by the state organ or public office. (5) The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section.		
	Paragraph 6 Processing of responses 6. A state organ or public body shall ensure — (a) that all responses are considered and analysed (b) the final decision is made available to the public including the reasons for the decisions taken; and (c) the disclosure of all relevant information for the public to understand and evaluate the decision made.	Amend 6(b) by inserting after the phrase “taken” the following “including the rejection of the submissions made”	The basis of the rejection of the submissions communicated to the participants makes them appreciate the same. This will also minimize cases of complaints and murmurs of being ignored or excluded from decision-making.

General comments

The Commission on its own behalf and on behalf of the Special Interest Groups (SIGs) lauds the steps taken to formulate a framework for actualizing the principle of meaningful public participation as espoused in the Constitution. The Commission has made a number of proposals in serial No. 3 above on the schedule (guidelines) based on its observation on the barriers and limitations to meaningful participation by our special interest groups. The proposal on County Legislation is for the purposes of replicating a similar framework at the County Government level to realize the same objects as envisaged in the present proposed law.

6th November 2023

Office of The Clerk,
Parliament Building,
Parliament Road,
Nairobi.

Attention: *cega@parliament.go.ke*

Dear Clerk,

**RE: WRITTEN MEMORANDUM SUBMISSION BY CENTRE FOR ECONOMIC GOVERNANCE ON
THE PUBLIC PARTICIPATION BILL, 2023**

Centre for Economic Governance (CEG) is a civil society organization whose vision is a society where there is economic justice and equity for all. CEG seeks to influence change among policymakers, civil society and citizens at the national and local levels for the benefit of the poor and marginalized particularly with regard to equity in resources mobilization, allocations, and spending in the provision of services and development.

We work to promote transparency, accountability and public participation in public finance management at the national and international levels. We are also members of the Okoa Uchumi Campaign and have been working with other Civil Society Organizations to develop and implement public participation programs and initiatives.

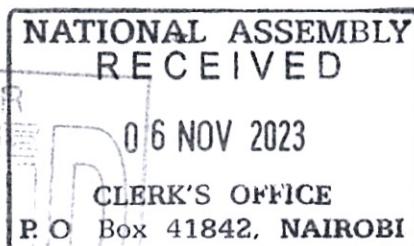
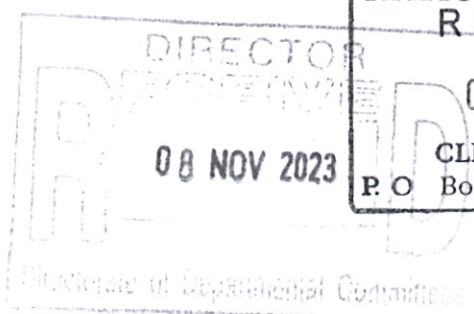
We have reviewed the public participation Bill and we believe it provides a framework that will enhance public engagement in decision making and self-governance. It captures important components and provides a latitude for state organs and public offices to develop relevant detailed guidelines. However, we believe there are a few additions and amendments that would make it more comprehensive.

Attached find our proposed amendments and additions. We would like to request that you consider inviting our organization to participate in the oral submission review process so that we can elucidate further our proposals.

Yours Sincerely



Rose Wanjiru
Executive Director



PUBLIC PARTICIPATION BILL REVIEW: WRITTEN SUBMISSION BY CENTRE FOR ECONOMIC GOVERNANCE (CEG)

Overall, the Bill is good and captures all the most important components and provides latitude for other authorities to develop detailed guidelines. Below are our proposed amendments to make it better:

CLAUSE/ SECTION	PROPOSED AMENDMENT	JUSTIFICATION FOR THE PROPOSED AMENDMENT
Part 1 section 2: Definition of public participation	Include the word audit in the definition and change it to read as follows: "Public participation means the process through which the public is engaged in understanding and contributing to decision making processes by state organs and public offices at the policy making, law making, implementation and audit level"	The Office of the Auditor General (OAG) has established a department that carries out Social Audits/social accountability which means it's important and already in practice to engage the public in some audits.
Part 3 section 12 Reports	Under section 12 (4) on the annual report a new requirement we propose to add a new a) and current a) to become b) as follows: The annual report shall contain - (a) information on the processes and the achievements of the public participation including number of forums and the outcomes; (b) a description of any complaints made against the institution in respect of public participation...	The purpose of public participation is to gather the views of the public. Therefore, the public participation report should have a summary of the outcomes of the public participation and not just the exception (complaints indicated in b)
Schedule General Public Participation Guidelines s.9(2) Remove 1(b)	Remove 1(b) " urgency of the matter "	Urgency of the matter will be subject to abuse by a state organ or public office may delay a particular matter and fail to conduct public participation arguing it is urgent.
Schedule General Public Participation Guidelines s.9(2) In section 2(3)	In section 2(3) add a new article (f) on feedback as follows: A public participation programme under subparagraph (1) shall clearly identify: (f) Feedback mechanisms to the public on the decisions made	There is usually a weakness in the feedback loop of public participation. Therefore, all public office and state organs should have clear guidelines on feedback mechanism after every public participation engagement
Schedule General Public Participation Guidelines s.9(2) Add section 9	Grievances/Complaints redress mechanisms (GRM/CRM) (or make reference to any law on petition) A state organ or public body shall provide a complaints redress mechanism that ensures - (a) Timely and comprehensive redress of the problems identified by the public throughout the public participation processes. (b) all complaints are comprehensively reported and well documented (c) a mutually agreeable resolution to both parties and provide alternative resolution mechanisms incase one party disagrees with the proposed resolution	The clauses on petition in other laws may be referenced or a clear section on GRM/CRM be included in the guidelines section 9 since many public participation processes also lead to new petitions



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UNIVERSITY OF NAIROBI
AFRICAN WOMEN STUDIES RESEARCH CENTRE
WOMEN'S ECONOMIC EMPOWERMENT HUB
P.O Box- 30197-00100 Tel: 0705 541746
Email: weehub@uonbi.ac.ke Web: weehub.uonbi.ac.ke



Date: 6.11.2023

To:
Mr. Samuel Njoroge
Clerk of National Assembly
P.O Box, 41842 – 00100
Nairobi.

Dear Sir,

RE: RECOMMENDATIONS ON THE PUBLIC PARTICIPATION BILL, 2023

Greetings,

The African Women's Studies & Research Centre (AWSRC) is a multi-disciplinary institution of the University of Nairobi that focuses on bringing African women's knowledge on development, and socio-political and socio-economic issues to visibility. This is realized through action-oriented research and academic discourse.

The University of Nairobi's Women Economic Empowerment (UoN WEE) HUB is a programme of the AWSRC. The Hub aims to contribute to evidence-based decision making and implementation of policies and programmes informed by what works for WEE in Kenya. The Hub is a multi-disciplinary research Team comprising of Economists, Development Experts, Agriculturalists, Educationists, Gender Experts, Legal Experts and Population Experts, have researched and come up with suggestions and recommendations.

Researchers from AWSRC – UoN WEE Hub hereby make an input to the Public Participation Bill 2023. The recommendations are part of the Hub's process to engage and contribute to the economic welfare of women and men of all ages in the spirit of national development. It is with this in mind that the AWSRC- UoN WEE Hub has made recommendations.

It is our prayer that the Committee will consider these recommendations.

Yours sincerely,



Wanjiku Mukabi Kabira EBS, CBS
Prof. Emeritus Literature and African Women's Studies.
UON Women's Economic Empowerment Hub Leader
Writer of "Time for Harvest: Women and Constitution Making in Kenya"
"A Letter to Mariama"
"In search of our Dreams "
"Remember not every door that is closed is locked. Push."
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SUBMISSION OF MEMORANDUM BY THE UNIVERSITY OF NAIROBI WOMEN ECONOMIC
EMPOWERMENT HUB ON

THE PUBLIC PARTICIPATION BILL, 2023

Contact person: Mary Wambui Kanyi

Tel no: 0722868461

Email: wambuimk@uonbi.ac.ke

06, November, 2023

INTRODUCTION

The African Women Studies, UON WEE Hub takes a keen interest in Kenya's Fiscal Policy situation with the view of supporting the increased participation of women in the Kenyan Economy. Public Participation is one of the ways in which the African Women Studies, UON WEE achieves its objectives. Public participation is one of the most important national values post the 2010 Constitutional dispensation guaranteeing citizens' participation in public affairs. A participatory democracy is one of the key themes of the 2010 constitutional dispensation. Of note, the Constitution of Kenya Review Commission itself that was tasked with the constitutional reform processes went to great lengths to ensure public participation. The Commission was determined to collect views across the country from members of the public that culminated in the Kenya National Constitutional Conference. However, the implementation of public participation has not been streamlined due to the lack of legislation and the political goodwill to guarantee the exercise of this right. This is particularly so in budgeting processes that are quite technical. Courts have also made determinations to enforce public participation. One of the landmark cases in this regard is *Kiambu County Government & 3 others v Robert N Gakuru & Others [2017] eKLR*. The Supreme Court has also pronounced itself on the necessary parameters for public participation in *British American Tobacco Kenya, PLC (formerly British American Tobacco Kenya Limited) v Cabinet Secretary for the Ministry of Health & 2 Others; SC Petition. No. 5 of 2017; [2019] eKLR (BAT Case)*, which essentially sets a legal criterion despite the lack of legislation. The Court set out the guiding principles for public participation as follows:

- i. As a constitutional principle under Article 10(2) of the Constitution, public participation applies to all aspects of governance.
- ii. The public officer and or entity charged with the performance of a particular duty bears the onus of ensuring and facilitating public participation.
- iii. The lack of a prescribed legal framework for public participation is no excuse for not conducting public participation; the onus is on the public entity to give effect to this constitutional principle using reasonable means.
- iv. Public participation must be real and not illusory. It is not a cosmetic or a public relations act. It is not a mere formality to be undertaken as a matter of course just to 'fulfill' a constitutional requirement. There is need for both quantitative and qualitative components in public participation.
- v. Public participation is not an abstract notion; it must be purposive and meaningful.

- vi. Public participation must be accompanied by reasonable notice and reasonable opportunity. Reasonableness will be determined on a case to case basis.
- vii. Public participation is not necessarily a process consisting of oral hearings, written submissions can also be made. The fact that someone was not heard is not enough to annul the process.
- viii. Allegation of lack of public participation does not automatically vitiate the process. The allegations must be considered within the peculiar circumstances of each case: the mode, degree, scope and extent of public participation is to be determined on a case to case basis.
- ix. Components of meaningful public participation include the following:
 - a) clarity of the subject matter for the public to understand;
 - b) structures and processes (medium of engagement) of participation that are clear and simple;
 - c) opportunity for balanced influence from the public in general;
 - d) commitment to the process;
 - e) inclusive and effective representation;
 - f) integrity and transparency of the process;
 - g) capacity to engage on the part of the public, including that the public must be first sensitized on the subject matter.

The Supreme Court decision thus provides clear guidance on what is expected of public agencies in facilitating meaningful public participation, including 'inclusive' representation buttressing the need for an assessment on the level of compliance.

CLAUSE	Proposal	New or proposed Amendment	Justification for the new/proposed Amendment
2	Public participation means the process through which the public are engaged in understanding and contributing to decision-making processes by state organs and public offices at the policy making, law making and implementation level	Public participation means the qualitative and quantitative process through which the public are meaningfully engaged in understanding and contributing to decision-making processes by state organs and public offices at the policy making, law making and implementation level	This will make it a real and not illusive process that is just undertaken as a cosmetic or a public relations act.
2	NEW- Add Meaningful participation	'Meaningful Public Participation' means a process that deliberately aims at engaging members of the public in a purposeful and real process that seeks their input to inform a public decision	To guide the people undertaking the public participation to be more engaging and involve the members of the public
4	NEW- add a new object	To give a prescribed legal framework for public participation that is meaningful and purposeful for the citizens of Kenya	Public Participation ought to be meaningful or else, it will be undertaken as a PR and Cosmetic exercise.
General Public Participation Guidelines s.9(2)			
Factors to be considered	Separate Access to Information and Venue	(i) ability of the targeted participants to access timely and relevant information	(i) Make it mandatory that institutions put the information in places where they can easily be accessible. Some institutions

CLAUSE	Proposal	New or proposed Amendment	Justification for the new/proposed Amendment
1		(ii) Inclusivity is important- equal access to opportunities to participate (iii) Venue of the public participation	direct entities to places where they can access the information, only to find that it is not there (ii) Venues selected often serve as a stumbling block. Many are usually far from where the targeted participants re making it hard for them to access
Notice 2(1)	A state organ or public office shall give the public adequate notice to make their input into an issue	A state organ or public office shall give the public adequate notice, which shall be not less than 14 working days to make their input into an issue	Public Participation ought to be meaningful or else, it will be undertaken as a PR and Cosmetic exercise.
Processing of responses	NEW – (d)	An analysis of the responses obtained to ensure that the majority views is incorporated e.g, if a majority are for the deletion or addition of a particular paragraph/clause/section, it should be deleted/added	This helps in making the entire process meaningful as it will lend credence to the whole process and ensure that the views of the public are captured.

Memorandum to the National Assembly on the Public Participation Bill, 2023

(National Assembly Bills No. 52 of 2023)

Submitted on Monday, November 6, 2023

Contact Person:

Dr. Abraham Rugo Muriu.

Country Manager, IBP Kenya

Email: arugo@internationalbudget.org

Mobile: +254721431083

Introduction

The International Budget Partnership Kenya (IBP Kenya) is a Kenyan non-profit organization working to advance transparency, accountability, participation, and equity in national and county budgeting processes. The International Budget Partnership Kenya's (IBP Kenya) work is focused on strengthening the impact of civil society advocacy and citizens on budget policies and outcomes at both levels of governance in Kenya. Through deep and sustained engagement, the IBP Kenya provides support to build expertise and skills of civil society actors and citizens involved in budget advocacy. Citizen advocacy, generation of evidence, technical assistance, learning, and networking are all integral components of IBP Kenya's work.

The Constitution of Kenya, 2010 (COK) outlines the principles of public participation in a bid to guide the realisation of a responsive system of governance and participatory democracy. While a number of laws enacted following the COK contain provisions on public participation, including the Public Finance Management Act 2012, County Governments Act 2012, and Access to Information Act 2016, the lack of a specific overarching law more than two decades after its promulgation has meant that the standards of public participation have remained largely undefined.

From IBP Kenya's experience engaging in public finance at the national and subnational levels of government, the lack of a common standard on public participation in budgeting processes has contributed to a public perception of these participation opportunities as tokenistic and exclusive. To the extent that the proposed Public Participation Bill 2023 seeks to establish a framework on how meaningful and inclusive public participation is to be conducted in Kenya, we make the following submissions.

Submissions:

1. Right to Public participation

The bills proposal in provision 7 (1) of Part II that any member of the public or entity likely to be affected by a decision should have the right to participate in the decision-making process gives life to the principles of public participation found in Articles 1, 10, 35, 69, 118, 174, 184, 196, 201, and 232 of the Constitution of Kenya. The provision firmly establishes the right to public participation on matters relating to the formulation of policies, budgeting and financial management and lawmaking processes.

2. Lack of Definition of Meaningful Participation

In provision 6(1) of Part II the bill mandates the provision of reasonable and meaningful opportunities for public participation by state organs or public offices. While the following provision, 6(2), provides considerations to be made in determining what is reasonable, the bill does not provide guidance on what constitutes a meaningful public participation opportunity. We contend that the implicit or explicit definition of what constitutes a meaningful opportunity in any legislation on public participation is likely to be the greatest determinant of its success on a practical level.

To this extent, we propose some considerations in determining the extent to which public participation opportunities are meaningful:

- a. **Access to information:** The availability and comprehensiveness of timely information relevant to the decision at hand. This should include a minimum threshold of what constitutes timely access to information.
- b. **Decision at hand:** Clear communication of the agenda of public participation with details of who is affected by the decision, what information the public should refer to in their preparation. This aspect is focused on the capacity of Citizens to understand and engage with the decision at hand.
- c. **Inclusivity:** This relates to the need for inclusive and effective representation members of the public likely to be affected by the decision. A key consideration here is the interplay between practicality and representation. What principles should be considered to ensure there is inclusivity.
- d. **Facilitation of public participation:** The law should also make a requirement that government officials who facilitate public deliberation should be well versed with the subject matter to support an informed dialogue between citizen and their government.
- e. **Feedback:** Feedback refers to what happens after public deliberations. Key considerations here are the presence and strength of mechanisms through which the public will be informed of their inputs on the decision, how their inputs informed the decision-making process and the decision itself.

3. Aligning of already existing public participation legislation and policy with the proposed national bill e.g. EMC, Nairobi counties.

Since the onset of devolution different public bodies have overtime, developed their own legislations and policy on public participation. Several examples emerge from the county level, including Nairobi Kisumu, El Marquette, Nakuru, Kilifi, Vihiga, Mombasa, Laikipia, Nyeri, Kakamega, Meru, Turkana, among others. The current bill does not seem to provide a idea of what will happen with these existing pieces of legislation. In their introduction, the regulations provide for adequate mechanisms to align these existing laws and policies to the overarching framework provided by the bill.

In addition, these established pieces of legislation can be seen as sources of guidance on what's the evolved unit envision to be public participation for the new Bill.

4. Strengthening of requirement on reporting of Public Participation (Provision 12, 6 of Guidelines)

The requirement for all state bodies to prepare an annual report on public participation as provided for in provision 12 Part III is welcome to the extent that enables better accountability on input provided on and incorporated into decision-making processes. While the bill currently envisages that this report will be prepared and submitted before the National Assembly in the case of a national government institution, and the County Assembly in the case of a county level institution, the public should also have access to these reports. Therefore, there should be an explicit requirement to publish and publicize the reports.

In addition, in order to give life to provision 6 of the General Public Participation Guidelines we recommend that the provision include a requirement for state bodies to provide a report on each specific public participation engagement conducted. The information to be included in these reports should include all input received during public participation engagements, how these responses were analyzed, who attended the engagement, the final outcome, and the reason for the outcome.

These changes would enable for more meaningful public participation and allow for a continuous feedback loop between the public and state agencies towards realizing Quality of public participation processes as provided in provision 7 (a).

5. Creation of mechanisms to enable timely access to information.

We welcome provisions 2, 4, 5 and 6 of the general guidelines as key to ensuring fair and timely access to information before and after public participation engagements. Poor access information is often a significant hindrance to meaningful public participation. The annual County Budget Transparency Survey shows counties continue to struggle to make budget documents publicly available and in a comprehensive manner. In order to provide mechanisms that would ensure the implementations of provision 5 and 6, we recommend that the regulations include the provision on the appointing of an access to information officer in all state of bodies as a port of call for information request provided for in Provision 7 (2) of the Access Information Act.



UDPK
United Disabled Persons
of Kenya

CDRA
Caucus on Disability Rights
Advocacy

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JOINT MEMORANDUM

ON

PUBLIC PARTICIPATION BILL, 2023

National Assembly Bill No.52 of 2023

SUBMITTED TO THE NATIONAL ASSEMBLY COMMITTEE
ON PARLIAMENTARY BROADCASTING AND LIBRARY

Thro'

THE CLERK OF THE NATIONAL ASSEMBLY.

6th November, 2023
Nairobi,
Kenya

1. INTRODUCTION

Collaborating Parties

This memorandum is prepared by the Caucus on Disability Rights Advocacy (CDRA) and the United Disabled Persons of Kenya (UDPK).

2. UDPK is the umbrella organization of national and grassroots associations of persons with disabilities in Kenya, presently comprising more than 100 organizations with active presence in all the 47 counties.

3. CDRA is a coalition of organizations of and for persons with disabilities which seeks to promote the interests of persons with disabilities in terms of the Constitution of Kenya, 2010.

4. The memorandum is submitted in response to the National Assembly invitation for public participation in the legislative process on the Persons with Disabilities Bill, 2022.

BACKGROUND AND CONTEXT

1. The bill seeks to provide a general framework for effective public participation. The public participation process is an approach that allows persons to participate in Governance and Development decision-making. Persons with disabilities are a core part of the country's citizenry, and they face a myriad of barriers that hinder them from participating in societal affairs on an equal basis as others, so to ensure their inclusion and participation in society there is an overarching need to involve them in decision-making process.
2. Data indicates that participation of persons with disabilities across counties is around 0.3%. This number is low as compared to 0.9 million persons with disabilities from the Kenya National Bureau of Statistics (KNBS) 2019 census. Barriers to participation include a lack of targeted sufficient budgetary allocation to the responsible authority which would ensure inclusion of persons with disabilities in the participation process and extra cost to disability participation; persons with disabilities undergo extra cost than other persons with disabilities if they need to participate in the public participation process. Limited representation of persons with disabilities in public participation planning committees contributes to the exclusion of persons with disabilities in the process.

3. PROPOSALS AND RATIONALE

Proposed Amendment No. 1: Part I - Preliminary

4. Object of the Act

Consider including a new sub-clause (b) and re-ordering the sub-clauses in proper descending alphabetical sequence.

"Promote inclusiveness in public participation for all persons and in particular persons with disabilities"

Rationale:

We are highlighting participation by persons with disabilities because it has been a big issue in terms of meaningful and effective participation.

Proposed Amendment No. 2: Part II – Public Participation

6. Conduct of public participation.

a) The Bill in Section 6 (1) states that "A state organ or public office shall provide reasonable and meaningful opportunities for public participation"

Proposed improvement:

We propose to add **procedural accommodation** to section 6(1) so that it reads **"A state organ or public office shall provide procedural accommodation, reasonable and meaningful opportunities for public participation"**

Rationale:

Procedural accommodation in this context refers to ensuring that the venue is accessible and, the process provides for the needs of those who use different means of communication, e.g., sign language, and the timing of public participation, in line with Article 10 (2) (b) of the Constitution. This is necessary to ensure participation by all including persons with disabilities.

b) The Bill in Section 6 (2) (d) states that **"need for inclusive and effective representation; and"**

Proposed improvement:

We propose to add **"including recognition of the need for reasonable accommodation"** to section 6 (2) (d) to read **"need for inclusive and effective representation including the recognition of the need for reasonable accommodation; and"**

Rationale:

Reasonable accommodation in accordance with the CRPD Article 2 refers to specific needs of individuals to enable them to participate, for instance, the Deaf require sign language interpretation, the Blind may require information in Braille, and persons with intellectual disabilities and autism may require information in Easy Read.

7. Rights of a Member of the public in public participation.

The bill in section 7(2) (b) states that **"attend a public participation forum and make presentation either orally or by way of written submission to a state organ or public office on the subject matter as may be determined"**

Proposed improvement:

We propose to add **"by Kenyan Sign Language or any other augmentative and alternative forms of communication"** to section 7(2) (b) so that it reads **"attend a public participation forum and make presentation either orally, by way of written submission, by Kenyan Sign Language or any other augmentative and alternative forms of communication to a state organ or public office on the subject matter as may be determined"**

Rationale:

Our experience is that persons with disabilities who use other means of communication other than oral and writing are usually left out of any form of participation. We feel that providing for their accommodation is an important way of upholding their right to participation. Additionally, Kenyan Sign Language is recognized in the Constitution in section 7(3) (b) where the state is obligated to promote its usage and development. There is a need to explicitly state that persons can make contributions through Sign Language to promote participation and respect every person's rights of expression and participation.

Proposed Amendment No. 3: Part II – Public Participation

9. Development of specific public participation guidelines

The Bill in Section 9 (2) states that "The guidelines developed by a responsible authority under subsection (1) shall include the requirements set out in the general guidelines for public participation in the Schedule and may -

Proposed Improvement

We propose to add 2 (c) **"Provide specific guidelines on the participation of persons with disabilities in accessible means of communication including Braille, Sign Language or other appropriate means of communication"**

Rationale:

All guidelines should give consideration to persons with disabilities, especially those who need alternative means of communication. Our experience is that persons with disabilities who use other means of communication other than oral, and writing are usually left out of any form of participation. We feel that providing for their accommodation is an important way of upholding their right to participation.

Proposed Amendment No. 4: Part III – Miscellaneous Provisions

11. Financial Provisions

The bill in section 11 provides that **"A state organ or public office shall provide the necessary resources under this Act and shall include in its annual estimates provisions for expenses for purposes of undertaking public participation."**

Proposed improvement:

We propose to add **"and for purposes of ensuring full participation of persons with disabilities"** at the end of the provision so that it reads **"A state organ or public office shall provide the necessary resources under this Act and shall include in its annual estimates provisions for expenses for purposes of undertaking public participation and for purposes of ensuring full participation of persons with disabilities."**

Rationale:

Data indicates that participation of persons with disabilities in both the National and County Public Participation Processes is very limited. This is necessitated by a lack of proper planning by duty bearers including a lack of targeted or ring-fenced resources to ensure that persons with disabilities participate fully. Ring-fencing resources allocated for

public participation to cater to the participation of persons with disabilities will increase their participation

The practice has been that budget allocation is normally made to public participation but no specific allocation to ensure persons with disabilities participation, this has led to exclusion. The ring-fenced resources will cater to minimize barriers faced by persons with disabilities in participating in the decision-making process including extra cost to disability participation.

12. Reports

The bill in section 12(4) provides that **"The annual report shall contain -"**

Proposed improvement:

We propose to add another paragraph between 4(a) and 4(b) and name it 4(b) and rename the previous 4(a) to 4 (c). The newly added paragraph 4(b) shall read **"Disaggregated data of the number of special interest groups, in particular persons with disabilities, who participated in the public participation forums"**

Rationale:

In order to meet the objects of the bill and ensure inclusion in public participation it will be key to monitor and track the participation of special interest groups, and particularly persons with disabilities in their diversities, in the decision-making process. This monitoring will inform planning and resource allocation for the development of subsequent public participation budgets and planning. Data then becomes central in the tracking and evaluation process.

13. Penalty

The bill in section 13 provides that **"A person who contravenes this act commits an offence and shall upon conviction, be liable to a fine no fine not exceeding three hundred thousand shillings or imprisonment for a term not exceeding six months or both"**

Proposed improvement:

We propose to remove "no fine" so that the subsection reads **"A person who contravenes this act commits an offence and shall upon conviction, be liable to a fine not exceeding three hundred thousand shillings or imprisonment for a term not exceeding six months or both."**

Rationale:

The deletion of "no fine" makes the structure of the sentence sound and removes ambiguity.

Proposed Amendment No. 5: Schedule General Public Participation Guidelines.9 (2)

1. Factors to be considered

The Bill in Section 1 (i) states **"the ability of the targeted participants to access the necessary information and the venue.)**

Proposed Improvement

Consider inserting the words **"including in accessible formats"** immediately after the words **"necessary information"** to read **"the ability of the targeted participants to access the necessary information, including in accessible formats, and the venue."**

Justification

This should recognize the fact that there are people who access information in augmentative and alternative methods as opposed to the common methods of information dissemination.

2. Notice

a) The Bill in Section 2 (1) provides that **"A state organ or public office shall give the public adequate notice to make input on the issue"**

Proposed improvement:

We propose to delete **"adequate"** and replace it with **"14 days"** in the paragraph so that it reads **"A state organ or public office shall give the public 14 days notice to make input on the issue"**

Rationale:

We submit that it is prudent to qualify the adequacy of time with something specific. A minimum of 14 days is adequate for members to submit their input on the issue. The danger of leaving it open without specified time is that different entities may have different interpretations of what adequate time is. Specifying the time also makes the process predictable

b) The Bill in section 2 (2) (c) states **"websites"**

Proposed improvement:

We propose to add "that are adherent to KS 2952 – Accessibility - ICT Products and Services by the Kenya Bureau of Standards" to read "websites that are adherent to KS 2952 – Accessibility - ICT Products and Services by the Kenya Bureau of Standards"

Rationale:

We submit that it is prudent to ensure that websites used for the publication of public participation notices are accessible to persons with disabilities in their diversities. Web accessibility allows persons with disabilities to have equal access to the same information that is available to everyone. The KS 2592 standard specifies requirements for ensuring that ICT products, services, and opportunities are made accessible to all, including persons with disabilities.

3. Access to Public Participation Processes

The Bill in Section 3 (2) states that **"A state organ or public office shall take all necessary measures to ensure the participation of persons with disabilities in the public participation processes."**

Proposed improvement:

We propose the addition of "meaningful and effective" to section 3 (2) to read **"A state organ or public office shall take all necessary measures to ensure the meaningful and effective participation of persons with disabilities in the public participation processes."**

Rationale:

It is important to emphasize that participation of persons with disabilities will need to be meaningful and effective in line with Article 4 (3) as quite often persons with disabilities attend meetings and they either do not follow the discussions because communication is difficult, or their views are not given any weight.

4. Adequate time

The Bill in Section 4 provides that **"A state organ or public office shall give the public adequate notice to make their input on the issue"**

Proposed improvement:

We propose to delete "adequate "and replace it with "14 days" in the paragraph so that it reads **"A state organ or public office shall give the public 14 days notice to make input on the issue"**

Rationale:

We submit that it is prudent to qualify the adequacy of time with something specific. A minimum of 14 days is adequate for members to submit their input on the issue. The danger of leaving it open without specified time is that different entities may have different interpretations of what adequate time is. Specifying the time also makes the process predictable.

5. Access to Information for Public Participation

a) The Bill in Section 5 (1) (b) provides that **"ensure that the documents are published and distributed in a language and form that can be used by the public"**

Proposed improvement:

We propose the addition of "as well as Kenyan Sign Language, Braille, electronic and other alternative and augmentative communication methods" in section 5 (1) (b) to read **"ensure that the documents are published and distributed in a language and form that can be used by the public as well as Kenyan Sign Language, Braille, electronic and other alternative and augmentative communication methods"**

Rationale:

We have other forms of communication, particularly for persons with various disabilities that are necessary to consider in all aspects of public participation. This is recognized in the Kenya Constitution section 54 (d).

b) The Bill in Section 5 (3) (b) provides that **"may, where the authority incurs expense in providing the information, be subject to payment of a reasonable fee; and"**

Proposed improvement:

We propose the deletion of 5 (3) (b)

Rationale:

This contradicts Article 35 (1) of the Constitution which provides that every citizen has the right of access to information held by the State and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.

6. Processing of Responses

The Bill in Section (b) provides that **"the final decision is made available to the public, including the reasons for the decisions taken; and"**

Bill in section (c) provides that **"the disclosure of all relevant information ..."**

Proposed improvement:

Insert the words "in accessible formats" immediately after the words "made available to the public" to read "the final decision is made available to the public in accessible formats, including the reasons for the decisions taken; and"

Insert "including the proposals submitted and or considered" so that section (c) reads that "the disclosure of all relevant information including all the proposals submitted and or considered ..."

Rationale:

We have other forms of communication, particularly for persons with various disabilities that are necessary to consider in all aspects of public participation. This is recognized in the Kenya Constitution section 54 (d).

There is need to know for a fact if all submitted proposals were considered and included in the final decision made.

End.

FOR AND ON BEHALF OF THE UNITED DISABLED PERSONS OF KENYA [UDPK]
AND THE CAUCUS ON DISABILITY RIGHTS ADVOCACY [CDRA]



Sally N. Nduta

Chief Executive Officer, United Disabled Persons of Kenya,
And Secretary, Caucus on Disability Rights Advocacy

Dated at NAIROBI, Kenya
November 6th, 2023



6th of November, 2023

Our Ref: Uraia/NA/11/23
Clerk of the National Assembly,
P.O. Box 41842-00100, Nairobi;
Main Parliament Buildings

RE: The Proposed Public Participation Bill

Uraia Trust

Uraia is a Kiswahili word that means citizenship. Uraia Trust was initially established to provide quality civic education and enhance civic engagement on reform and reconciliation in Kenya on a sustainable basis with reliance primarily on local resources. The preamble of the Trust Deed anchors the spirit of Uraia: *sourcing democracy from within and through effective engagement and civic engagement*. These ideals reflect much of what civic education ought to deliver.

The organization's focus is on developing a citizenry that will commit to protecting the values of democracy and demand good governance in society. Additionally, the trust continues to create awareness of the rights and responsibilities of the citizens as well as engaging with duty bearers to ensure proper implementation of the constitution and affiliated legislative provisions on human rights.

Uraia Trust, with the generous support of its donors and dedicated implementing partners, has consistently played a pivotal role in promoting and enhancing public participation on various issues. This endeavour also involves enlightening citizens about their pivotal roles and responsibilities in the context of public participation

With the established backdrop the following submissions reflect the perspective of the Trust on the proposed Legislative Amendments and Bills by the National Assembly 2023.

Submissions:-

S/No.	Section of the Proposed Bill	Comments on the Proposed Amendments/Recommendations
1.	Section 14 (1)	While it is important to grant the Cabinet Secretary the authority to make regulations for the better implementation of the Act, it is crucial to specify the scope and limits of these delegated powers. This will



		help avoid potential misuse of authority and ensure accountability. Consider adding a clause that defines the extent to which the Cabinet Secretary can exercise these powers. Suggested Change: Insert a clause to define the scope and limitations of the Cabinet Secretary's authority to make regulations under this Act.
2.	Section 14(2)(a) and Section 14(2)(b)	Suggested Changes: Additional Institutions The provision regarding the Cabinet Secretary's authority to specify additional institutions should include a requirement for public consultation before making such decisions. Public participation in identifying these institutions can help ensure a more inclusive and informed process. Prescribed Matters The section should specify the criteria or process by which the Cabinet Secretary determines the matters that need to be prescribed. It should also require the Cabinet Secretary to publish the reasons for prescribing certain matters. This ensures transparency and accountability.
3.	Section 14 (3)(c)	It is crucial to specify the principles and standards applicable to the delegated power. The reference to the Statutory Instruments Act, 2013, and the Interpretation and General Provisions Act is a good start, but the Act should clarify how these acts will be applied in practice. Suggested Change: Elaborate on how the principles and standards found in the Statutory Instruments Act, 2013, and the Interpretation and General Provisions



Kenya's National Civic Education Programme

		Act will be applied to the delegated powers in Section 14.3c.
4.	Schedule – General Public Participation guidelines	For the longest period of time the principles of public participation have been left to the courts for interpretation and some of the principles proposed by the courts have been effective enough and therefore need to be added in the schedule. Suggested Change: Add the need to adhere to the principle that Public participation must be real and not illusory. It should not appear to be too cosmetic or a public relations act. This will prevent the act from turning into a mere formality to be undertaken as a matter of course just to fulfil a constitutional requirement. There is need for both quantitative and qualitative components in public participation. Also add the elements related to the aspect that public participation is not an abstract notion; it must be purposive and meaningful.

We are hopeful that our proposals will be considered during the deliberations of the above Bills.

Sincerely

Helen Mudora

Civic Education Manager

Uraia Trust

Email: Helen.mudora@uraia.or.ke



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Date: 6/11/2023

The Clerk, National Assembly
Tel: 254 2 2221291 or 2848000
Fax: 254 2 2243694
E-mail: cna@parliament.go.ke

MEMORANDUM ON PUBLIC PARTICIPATION BILL, 2023

Coast Civil Society Network for Human Rights (CCSNHR), herein referred to as the Network is a broad coalition of over one hundred (100) Civil Society Organizations (CSOs) including community-based organisations, national and international non-governmental organisations, trusts and religious organisations operating in the coast region of Kenya, with dominant presence in Mombasa. The objective of the network is protecting and upholding human rights for the residents in the region.

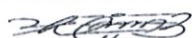
The Network was established in 2006 and came into full operation in 2016. The Network operates under the following thematic groups namely; Governance, Peace and Security, Coast Land Non-State Actors (CLNSA), Gender & Health, Youth and Persons With Disability (PWDs). Under the youth thematic group Agenda Kenya is the led organization which was registered under the Kenyan Laws in 2018 as a Community Based Organization in the Coast of Kenya. The organization was founded as a result of the steady growth in community service throughout the Kenyan Coastal region. The growth in different Coastal Counties necessitated the critical need to address the growing gaps of youth grievances in the communities in a more specialized and focused way to enhance youth participation and voices in addressing the local issues.

The following concerns emerged from the Analysis of Public Participation Bill, 2023;

1. **Clarify the Definition of "Public":** The bill should provide a clear and inclusive definition of who constitutes the "public" to ensure that all interested parties and stakeholders have the opportunity to participate in decision-making processes. This could include specifying that it encompasses individuals, community groups, civil society organizations, and businesses.
2. **Enhance Access to Information:** While the bill recognizes the right to request information, it should establish strict timelines for responding to requests and should minimize the discretion of state organs to withhold information. Additionally, it should ensure that the information is provided in a format accessible to all, including those with disabilities or who may not be proficient in the national language.

3. **Diversity and Inclusion:** There should be explicit requirements in the bill to ensure that public participation processes are accessible and inclusive. This includes providing interpreters for participants who are not proficient in the national language and sign interpreters for people with disabilities to accommodate all the groups in the community. Guidelines should also be developed to ensure representation from marginalized groups.
4. **Feedback Mechanism;** It would be beneficial for the bill to include a phrase that allows the public entity to provide feedback on the public participation process on what has been adopted and what has not yet. This feedback is valuable, for making the government accountable to its citizens and encouraging the people to participate in public participation.

Felix Obiero



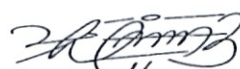
Convener Youth Thematic Group

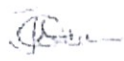
The Coast Civil Society Network for Human Rights

info@ajendakenya.org otienofelix@ajendakenya.org

Tel: 0711712347

List

No	Name	Org Name	Signature
1	Felix Obiero	Ajenda Kenya	
2	Edwin Shamir	Together 4 Society	
3	Zipporah Njoki	Stretchers Youth Organization	
4	Tirus Makumi	Mombasa Citizen	
5	Pamba Juma Abdalla	Kama Si Mama Nisinge Sema	PJA

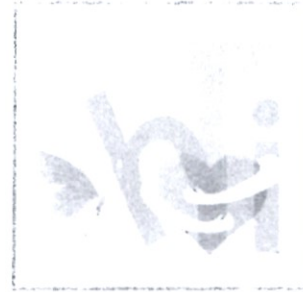
6	Jedidah Oduor	Coast Young Stars Empowering communities	
7	Geofrey Kithuku	The Amplifiers Youth Organization(TAYO)	
8	Nancy Nyaboke	Gender Action Empowering Communities	
9	Rocky Peter	Human Protection and Justice Organization	Rp
10	Blessing Faith	Hope Trans Initiative	
11	Nancy Atieno Okello	Ujamaa Centre	

Logos





Tel: +252724135274 M: 06 humanprotectio
Email: humanprotectio@gmail.com H Human Protection and Justice Org





MEMORANDUM ON THE PROPOSED PUBLIC PARTICIPATION BILL, 2023. (National Assembly Bills No. 52 of 2023).

THE CHAIRPERSON,

NATIONAL ASSEMBLY COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY.

THRO'

CLERK OF NATIONAL ASSEMBLY,

P.O.BOX 41842-00100

NAIROBI, KENYA

6TH NOVEMBER, 2023

FROM;

WECARE COMMUNITY-BASED ORGANIZATION

P.O.BOX PRIVATE BAG,

MASENO, KENYA

wecare518@gmail.com

+254797680921

RE: SUBMISSION OF MEMORANDUM ON THE PROPOSED PUBLIC PARTICIPATION BILL, 2023. (National Assembly Bills No. 52 of 2023)

INTRODUCTION.

WeCare Community Based Organization is a registered youth-led organization in Kenya working to enhance and strengthen the capacity of citizens to meaningfully and effectively participate in the governance and development process through public participation and driving public policy innovation to build a free, just, and sustainable community

BACKGROUND.

WeCare Community Based Organization has reviewed the proposed Public Participation Bill, 2023 that seeks to provide a framework for effective public participation and to give effect to the constitutional principles of public participation and participatory democracy as outlined in Articles 1, 10, 35, 69, 118, 174, 184, 196, 201 and 232 of the Constitution of Kenya, 2010.

We acknowledge and appreciate the spirit and intention of this bill to provide for national legislation that will safeguard the participation of citizens as primarily outlined in Articles 1, 10, and 35(a).

Our views on some of the issues are therefore as follows,

1. Definition of public participation.

The bill Part 1- Preliminary, defines public participation as the process through which the public is engaged in understanding and contributing to decision-making processes by state organs and public offices at the policy-making, law-making, and implementation levels.

Recommendation and justification.

We recommend that the wordings "*fully engaged, formulation, views considered and evaluation*" should be included to make it more effective, and citizen-inclusive and give effect to Article 1 (all sovereign power belongs to the people) of the Constitution.

The definition should therefore be; *the process through which the public is fully engaged and involved in formulating, understanding, and contributing to the decision-making process and their views considered by state organs and public offices at the policy-making, law-making, implementation, and evaluation levels.*

2. Objects of the Act.

Part 1, Section 4 of the bill, outlines the four objects of the Act.

Recommendation and Justification.

We propose that the primary objective of this Act should be to recognize, safeguard, and promote Article 1 of the Constitution.

The participation of citizens as provided for in Articles 10(2), 118, 196, 201(a), and 232(1)(d) of the Constitution primarily originates with all sovereign powers belonging to the people. (Article 1)

Section 4(a) should therefore be; to safeguard the sovereign power of the people of Kenya as enshrined in Article 1 of the Constitution.

3. Rights of a member of the public in public participation.

Section 7 of the Bill outlines the rights of a member of the public who's taking part in the decision-making processes but leaves out one key right.

Recommendation and justification.

There should be a Section 7(d); a member of the public taking part in the decision-making process should be given feedback on the extent to which their submissions or views have been considered or reasons for not being considered in giving effect to Article 35(1)(a) (*a member of the public has the right to access the information held by the State and Article 35(3), the State shall publish and publicize any important information affecting the nation*) of the Constitution.

4. Financing of public participation processes.

In Part III, (miscellaneous provisions), Section 11 of the Bill, mandates public offices and state organs to provide necessary resources which shall be included in their annual estimates provisions for purposes of undertaking public participation and consequently (at Section 12) prepare annual reports at the end of each financial year.

Recommendation and Justification.

The financing of public participation processes should be ring-fenced and if possible capped at a given percentage of the annual budgets of state organs or public offices to avoid cases of corruption or wastage.

5. Contents of the annual public participation reports provided by relevant authorities.

Section 12(4)(a, b) confines the contents of the annual public participation reports to (a) a description of any complaints made against the institution concerning public participation, actions taken, and any other information that the responsible authority may consider relevant.

Recommendation and justification.

We propose that Section 12(4)(b) should be; details of the level of inclusivity in the public participation process giving priority to people with disabilities, the marginalized, vulnerable and minority groups and Section 12(4)(c) on the views considered from members of the public and the feedback given to the citizens to guide implementation and evaluation of the public participation processes.

6. . General penalty.

Section 13 of the penalty sets the penalty for anyone who contravenes any provision of the Act at a fine not exceeding three hundred thousand shillings or imprisonment for a term not exceeding six months or both upon conviction.

Recommendation and Justification.

It is in our view that the said penalty is light and doesn't reflect the weight and integral role of public participation in our governance process and democracy at large, for us, contravening any provision of this Act amounts to violating Articles 1, 10, 35, 69, 118, 174, 184, 196, 201 and 232 of the Constitution and generally preventing the people of Kenya from exercising their sovereign power.

We are therefore proposing that any person who contravenes any provision of this Act if convicted be liable to a fine not exceeding five million shillings or imprisonment for a term not exceeding two years or both.

7. Timeline for giving public participation notices.

The general public participation guidelines schedule, in Part 1, gives state organs or public offices the mandate to give adequate notice for citizens to make their input on the issue(s).

Recommendation and Justification.

To enhance participation, fairness, equity, and inclusivity we propose the adequate notice to be 21 days so that people from different regions who might be having difficulties with communication (medium or network availability and strength), interpretation, or accessibility can have enough time to discuss, understand and share inputs with the relevant authority.

8. Access to information for public participation.

Section 5 of the Schedule provides guidelines for publishing and distributing public participation documents.

Recommendation and Justification.

We are proposing a Section 5(1)(c), the documents and websites/ digital platforms should be disability friendly, i.e. have braille features, and availability of sign language interpreters among other means that will be deemed necessary.

9. Civic education and awareness.

Recommendation and awareness.

Still, in Section 5, we are proposing a Section 5(1)(d) that shall mandate state organs and public offices to conduct civic education, awareness, and public sensitization on the issues to be discussed before members of the public give their views.

Some of the policy issues and financial matters/documents are technical and enough civic education should be conducted before the citizens take part to ensure that the national values and principles of governance as outlined in Article 10(2)(b) of equity, social justice, inclusiveness, equality, fairness and nondiscrimination are adhered to and respected.

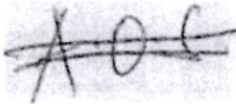
CONCLUSION

We believe that the Public Participation Bill, 2023 with the inclusion of our justified recommendations will indeed provide a strong mechanism to facilitate effective and coordinated public participation and give effect to the Constitutional principles of public participation and participatory democracy outlined in Articles 1, 10, 35, 69, 118, 174, 184, 196, 201 and 232 of the Constitution.

The Bill is also going to provide a good background and platform for information exchange among different state organs and between the state/devolved units and members of the public, it is also going to provide room for engagements and partnerships that can enhance the participation of citizens in governance processes. The availability of national legislation on public participation will also show a strong political goodwill to enhance transparency, accountability, and integrity in governance processes in Kenya.

This memorandum has been submitted in good faith and it's our prayer that the recommendations will be put into consideration.

Yours Sincerely,

A handwritten signature in dark ink, appearing to read 'A. Osano', with a horizontal line drawn through the middle of the signature.

Arnold S. Osano- Executive Director WeCare Organization.

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MEMORANDUM ON PUBLIC PARTICIPATION BILL

RECOMMENDATIONS

18/10/2023

We The Undersigned, On Behalf Of Kenya Climate Change Working Group

Do Hereby Submit Our Memorandum On The Matter Of Public Participation (Amendment) Bill 2023.

We Pray That :

In the amendments it important to address three major areas

1. Definition and terms which are missing in the document
2. The executive power as enshrined in the constitution to avoid constitutional spirit violation
3. Community representation as enshrined in the constitution.
4. And omission of some terms

In the Definition there is need to define "PUBLIC been a component that is commonly used its important that it's well defined to enhance mutual understanding for all and inclusive participation that will enhance effective participation and legality of the process.

Section 8 Talks about determining who is responsible for this Act but we feel the role of citizen\public is missing of which needs to be highlighted because the person is being planned for.

Section 9(1&2) The subject of the regulation through which responsible departments are carrying out the process to show how the engagement was inclusive in accordance to needs and priorities is missing.

Art,12(4a&b) The report should be complete indicating how it was conducted and how it was inclusive and effective

Part iv Section 14(2a)– Talks about the cabinet secretary may make some regulation but these may bring about conflict of interest..

Schedule 5(3b) The cost should be incurred by the authority and not the public.

1. Part of the procedure should be sensitization of the public participation policy

2. Should give the public what is the definition of PUBLIC NOTICE
3. Inclusion of access to information for PWDs should be clear
4. There should also put the consideration of place, culture and gender.

What we thought was positive in the document

Part ii Section 6 (2d) The amendment indicates positive indicator on inclusivity and effective which is key more so **Art.7(3)** shows someone can be protected without disclosure of identity if need be. The publishing of the document is an indicator of good will and process transparency that's in **Art.10**

Thanks for your consideration
In service of our Nation.

Sincerely

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CSPEN MEMORANDUM ON THE PUBLIC PARTICIPATION BILL, 2023

6th November 2023

1.0 BACKGROUND AND INTRODUCTION

The Civil Society Parliamentary Engagement Network (CSPEN) is a forum for Non-state Actors, bringing together civil society organizations, professional associations, think tanks and research institutions whose programme areas involve working with the legislature. The network was established in 2019 as a joint initiative of the Westminster Foundation for Democracy and Mzalendo Trust to provide a coordinated engagement with the Kenyan legislature, its committees and members in their oversight, legislation, and representation roles. Broadly, CSPEN seeks to engage with the legislature to ensure that legislative output meets the constitutional requirements of leadership, accountability, and integrity and is reflective of and aligns with the broader public interest. Currently, CSPEN has a membership of thirty-seven national civil society organizations, and the priority areas are guided by the design and architectural framework of the parliamentary committees of the 13th Parliament ranging from, Public Finance Management (PFM) and Devolution; Inclusion and Representation; Leadership and Integrity; Human Rights and Access to Justice; Public Participation & Service Delivery; Climate Justice and Environmental democracy.

This Memorandum is informed by CSPEN Membership and also incorporates the views of Partner organizations like (Twaweza East Africa and Inuka ni Sisi Kenya), Inuka Ni Sisi!, Pawa 254; Kenya Water for Health Organization (KWAHO); Center for Economic Governance (CEG); Amnesty International Kenya; Bunge Mashinani School of Governance; Kakamega Community Centre; Resource Conflict Institute (RECONCILE); Rural Empowerment Development Organization (REDO) Kenya; Integrated Development Facility (IDF); and DPOs-Disabled Person Organizations including the Kenya Association of the United Disabled Persons of Kenya; Intellectually Handicapped (KAIH); Action Network for the Disabled (ANDY); NCPWD – National Council for Persons with Disabilities; A.S.K; Differently Talented Society of Kenya (DTSK); Women Challenged to Challenge; and Kenya National Association of Deaf-KNAD).

As a key tenet of entrenching good governance, and by dint of Article 118(1)(b) of the Constitution and Standing Order 127(3), we support the Public Participation Bill, 2023 subject to the proposed amendments herewith which we collectively submit as follows and pray that they be considered.

Signed by

Convener, CSPEN

A handwritten signature in black ink, appearing to read 'Gaita', written over a circular stamp or mark.

Caroline Gaita
Executive Director
Mzalendo Trust
Email: caroline@mzalendo.com

2.6 Proposed CLAUSES OF THE PUBLIC PARTICIPATION BILL, 2023

No.	Clause	Proposed Amendment	Justification
1.	Clause 2 – Definitions	Insertion of a new definition: ‘Civic education’ means the process of effectively imparting information and creating awareness of decision-making processes, legislations, public policy, rights of the public and responsibilities of state organs and public offices, including how these rights and responsibilities are exercised and accessed by the public, and includes classroom-based learning, informal training, experiential learning, and mass media campaigns.’ The definition of public participation should be deleted and inserted with the following definition: ‘Public participation’ means the process where individuals and governmental and non-governmental groups are engaged and influence decision-making in policy, legislation, service delivery, oversight, audit, and development matters.	Civic education is crucial for effective public participation in decision-making within a democratic society, aligning with Article 35 of the Constitution which supports access to information. The proposals aim to make civic education mandatory for all public and state organs before decision-making, addressing the challenge of public understanding of laws and procedures, although limitations on financial and human resources exist for comprehensive civic education. This initiative involves integrating civic education into the national budget, ensuring allocated funds are properly utilized with specific measures in place. This definition borrows heavily from the definition adopted in the County Public Participation Guidelines by the Ministry of Devolution and Arid and Semi-Arid Lands (ASALs)¹ which broadens the actors and scope of public participation. Additionally, this definition introduces public participation in audit processes aligning it to ongoing practice at the Office of the Auditor General and its specific department on social audits/social accountability.

¹ January 2016. Accessed at: https://countytoolkit.devolution.go.ke/sites/default/files/resources/county-public-participation_january-2016.pdf

		Insertion of the definition of 'interested party' as: "a party who has a recognizable stake (and therefore standing) in the matter." (Black's Law Dictionary) Insertion of the definition of 'affected party' as: "a party that is likely to be impacted directly by the matters under consideration during the public participation" Amendment of the definition of Cabinet Secretary to be restricted to the Attorney General.	This will ensure that public participation proceedings include all persons, not just a cross-section of the public. This definition will decrease ambiguity as there is no Minister for Justice. Additionally, it will mitigate potential conflicts of interest, as the Cabinet Secretary will be tasked with formulating specific guidelines for their own ministry.
2.	Clause 4 – Object of the Act	Insertion of Article 174 (c) and Article 184 (1)(c) of the Constitution among the Articles that the Act intends to give effect to under sub-clause 4(a). Insertion of a sub-clause highlighting the principles of the Bill	These Articles highlight public participation as an object of devolution and as a key principle in the governance of urban areas and cities.
3.	Clause 5 – Scope of Public Participation	The insertion of vetting processes of select State officers should also be included as matters that can undergo public participation.	While these processes are guided by both the Public Appointments (Parliamentary Approval) Act and the Public Appointments (County Assemblies Approval) Acts, it is crucial to emphasize that they still fall within the ambit of public participation processes.

4.	Clause 6 – Conduct of public participation	Insertion of sub-clause (3) to highlight components of meaningful public participation. Sub-clause (2) provides the criteria for reasonable public participation but there is no correspondent sub-clause as to what constitutes meaningful public participation.	Meaningful public participation has been the subject of several court petitions and contains some of the following components:² (i) clarity of the subject matter for the public to understand; (ii) structures and processes (medium of engagement) of participation that are clear and simple; (iii) opportunity for balanced influence from the public in general; (iv) commitment to the process; (v) capacity to engage on the part of the public, including that the public must first be sensitized on the subject matter. (vi) Feedback on the input given, eventual outcome and how input influenced the outcome of public participation This should be included to avoid running afoul of the spirit of Article 10 of the Constitution by turning public participation into a cosmetic venture.
5.	Clause 7 – Rights of a member of the public in public participation	Insertion of the following additional rights under sub-clause (2): i) Making presentations without influence or interruptions by a State or public officer should also be introduced. ii) Members of the public should also not face any sanctions for attending and making submissions during public participation forums.	This will seek to reduce cases where citizens feel that they are intimidated within public participation proceedings.

² British American Tobacco Kenya, PLC (formerly British American Tobacco Kenya Limited) v Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (The Affected Party) [2019] eKLR

		iii) The public should also be accorded adequate and reasonable time to make presentations. Insertion of a sub-clause highlighting the obligations of state organs and/or public officers in conducting public participation. These include the establishment of proper structures for meaningful public participation and the establishment of a monitoring and evaluation framework. Further, input by public or state officers should be limited to giving instructions and/or making clarifications on issues raised on the matter under consideration. Lastly, the amendment of sub-clause 2 (b) to include that members of the public can also make submissions through Kenyan Sign Language administered by qualified sign language professionals.	Parallel to the existence of rights, there should be corresponding obligations that necessitate codification, ensuring a clear understanding among officials regarding their roles and responsibilities. Consequently, a clause highlighting the obligations of state organs and/or public office in conducting public participation would be necessary. This is to avoid intimidation of members of the public on the submissions made. It is crucial to explicitly acknowledge that individuals can contribute using Sign Language to encourage inclusivity and uphold the rights of every individual to express themselves and participate. Omitting Sign Language from the Bill might convey an impression of disregarding or discriminating against a specific group in public engagement.
6.	Clause 8 – Determination of responsible authority	Insertion of sub-clause (8) to highlight that the stated responsible authorities hold the power to delegate the performance of the duties within the Act to an officer with that specific scope (public participation officer) or any other officer within the entity/body.	This is to ensure that citizens have a point of contact within the state organ or public office that they can follow up with and hold to account on matters concerning public participation.
7.	Clause 12 - Reports	Sub-clause (4) should be amended to include:	The objective of public participation is to collect public opinion. The annual report should therefore outline all the information collected during all public participation

		a. a summary of the number and nature of public participation sessions held, b. the immediate output and outcomes from public involvement, and c. an update on the future steps or progress of the matters under consideration. Further, a sub-clause should be introduced to note that the annual reports should be made public for access to the public through the official websites of the Parliament, relevant institutions, and any other relevant channel of communication.	sessions held and the outcomes resulting from the same. In line with Article 35 of the Constitution, the clause should also include that the annual reports on public participation made at the end of each fiscal year should be made public for access to the public to give effect to the provision.
8.	Clause 13 – General Penalty	The Bill does not outline what constitutes an offence in its entirety.	The Bill must clearly define punishable conduct which will then be followed by the penalty. In this way, both citizens and public/state officers can foresee when a specific act would be a violation and adjust their conduct accordingly.
	Proposed Additional Clause – Alignment of existing public participation legislation	The current bill does not seem to provide a position on what will happen with these existing pieces of legislation. In their introduction, the regulations should provide adequate mechanisms to align these existing laws and policies to the overarching framework provided by the bill.	A Number of public bodies have developed their own legislations and policies on public participation including several counties.
General Public Participation Guidelines			
9.	Guideline 1 – Factors to be Considered	Introduction of a new sub-clause under guideline 1 - " Reasonable accommodations that persons with disabilities may require to participate meaningfully, including	In line with the Convention on the Rights of Persons with Disabilities, reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure persons with

		qualified sign language interpreters, physically accessible infrastructures and documents provided in braille/large print"	disabilities enjoy or exercise on an equal basis with others on all human rights and fundamental freedoms. These appropriate modifications and adjustments will allow persons with disabilities to engage meaningfully in public participation proceedings.
10.	Proposed Guideline (2)(1) - Notice	Adequate notice has not been defined clearly and may therefore be open to abuse as it is open to the discretion of either the State organ or the public office. We recommend amending the guideline and specifying a period of at least twenty-one (21) days to allow the public, affected parties and relevant stakeholders to adequately prepare and meaningfully participate. Insertion of social media platforms under (2) (a) as a place for publication and distribution of notices. The introduction of sub-clause (4) states that sub-clause (3) (b) does not prevent other interested parties from engaging in the public participation process.	The state organ facilitating public participation should be guided accordingly by the principles of administrative law in determining what 'reasonable' consists of. Additionally, this will ensure that members of the public do not feel that they have been denied the right to participate meaningfully. Twenty-one (21) days will provide interested parties sufficient time to analyze and prepare submissions for a hearing. As of January 2022, there were 11.75 million social media users in Kenya.³ Many Kenyans use these platforms avidly and receive information from the same. There has been a growing trend of government agencies leveraging these platforms to share vital information to citizens. Sub-clause (3) should not be interpreted to limit public participation to only actors identified by the state organ or public office. This will be deemed exclusionary.
11.	Proposed Guideline 4- Adequate time	Adequate notice has not been defined clearly and may therefore be open to abuse as it is open to the discretion of	The organ facilitating public participation should be guided accordingly by the principles of administrative law in determining what 'reasonable' consists of. Additionally,

³ [https://datareportal.com/reports/digital-2022-kenya#:~:text=Social%20media%20statistics%20for%20Kenya%20in%202022&text=Kepios%20analysis%20reveals%20that%20social,percent\)%20between%202021%20and%202022](https://datareportal.com/reports/digital-2022-kenya#:~:text=Social%20media%20statistics%20for%20Kenya%20in%202022&text=Kepios%20analysis%20reveals%20that%20social,percent)%20between%202021%20and%202022)

³ [https://datareportal.com/reports/digital-2022-kenya#:~:text=Social%20media%20statistics%20for%20Kenya%20in%202022&text=Kepios%20analysis%20reveals%20that%20social,percent\)%20between%202021%20and%202022](https://datareportal.com/reports/digital-2022-kenya#:~:text=Social%20media%20statistics%20for%20Kenya%20in%202022&text=Kepios%20analysis%20reveals%20that%20social,percent)%20between%202021%20and%202022)

		either the State organ or the public office. We recommend a period of at least twenty-one (21) days to allow the public, affected parties and relevant stakeholders to adequately prepare and meaningfully participate.	this will ensure that members of the public do not feel that they have been restrained from participating fully. Twenty-one (21) days will provide interested parties sufficient time to analyze and prepare submissions for a hearing.
12.	Proposed Guideline 5– Access to Information for Public Participation	Insertion of social media platforms under (1) (a) as a place for publication and distribution of documents for consideration	As of January 2022, there were 11.75 million social media users in Kenya. Many Kenyans use these platforms avidly and receive information from the same and there has been a growing trend of government agencies leveraging these platforms to share important information.
13.	Proposed Guideline 5– Access to Information for Public Participation	Amendment of (1) (a) to read; Publish and distribute the documents for consideration as widely as possible using the available means, including providing hard copies, radio and television advertisements, websites, or community radio announcements <i>at least 14 days (about 2 weeks) before the deadline for submission of feedback</i>	This provides timelines for the publishing and distribution of relevant information. Receiving the information within prior and sufficient time enables the conduct of proper effective and efficient public participation.
14.	Proposed Guideline 5– Access to Information for Public Participation	Amendment of (3) (c) to read; This may be subject to <i>information disclosure limitations under the Access to Information Act</i>	This ensures that any limitations imposed by a state organ or public office are subject to the Access to Information Act. The clause as currently reads leaves room to apply subjective requirements.

15.	Proposed Guideline 5 – access to information for public participation	Amendment of 4 (b) to read; The applicant fails to satisfy any <i>access to information requirements</i> .	To ensure that a failure by a state organ or public office to give information is pursuant to Article 35 of the Constitution as well as the Access to Information Act. Imposing a confidentiality requirement is subjective and may be in contravention of the Access to Information Act
16.	Proposed Guideline 6 – Processing of Responses	Add the following clause (d) transfer of applications to another public entity, if the information requested is held by that other public entity	This is in line with the provisions of section 10 of the Access to Information Act and enables ease of access to information by applicants
17.	Proposed Guideline 7 – Credibility and integrity of the process	This clause is welcome as it seeks to integrate the principles of Chapter 6 of the Constitution into the public participation process. However, the clause should clearly outline who the clients are.	
18.	Proposed Guideline 9 – Conduct in public participation processes	The guideline should be amended to specify what constitutes disruptive behaviour and what should happen if a public official causes it.	While the clause is welcome as it provides guidelines on the conduct to be expected during public participation sessions and processes, it is necessary to highlight what constitutes disruptive behaviour and what should happen in the event a public official is causing the disruptive behaviour.
19.	Clause 14	Schedule on General Public Participation Guidelines, sub-clause 1 (f) How do we measure the inclusivity of the process? The mechanism should give a standard procedure on how to ensure the process is inclusive to all contexts.	Public Participation should begin from the village, ward, and sub-county to the national level. The standard procedure for inclusivity shall ensure that the view captured at the village is implemented at the national level.



MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE PUBLIC PARTICIPATION BILL 2023

Submitted on 6th November, 2023

Submitted By:

Kenya Devolution Civil Society Organizations Working Group

Contact Person:

Evans Kibet Boss, Convener, KDCWG.

csodevolutionworkinggroup@gmail.com

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Introduction:

The Kenya Devolution Civil Society Organizations (CSOs) Working Group (KDCWG) is a national umbrella platform of the CSOs networks in the 47 Counties of Kenya. The overall objective of the KDCWG is to contribute to effectiveness in the implementation of devolution in Kenya and therefore the fulfillment of the devolution promises as stipulated in the Constitution of Kenya, 2010. The Working Group provides a structured platform for coordination and consultation and a safe and reliable space for continuous learning and knowledge exchange among Kenyan civil society organizations working in the area of Devolution.

The Kenya Devolution Civil Society Organizations Working Group (KDCSOWG) has analyzed the Public Participation Bill 2023, currently before the National Assembly, and wishes to submit as follows:

Section/Heading of the Bill	Current clause proposed for change	Proposal	Justification/Rationale Proposed changes.
Title	The title of the Bill	Change the Name of the Bill to “The Civic Education and Public Participation Bill 2023”	Civic education and public participation are closely linked and intertwined. They are like two sides of the same coin. Importantly, it not possible to have meaningful public participation without civic education. In the event that it is not possible to change the name of the Bill in its current form, then specific clauses on civic education should still be included in the Bill to ensure that civic education is adequately considered and covered.
Long Title	The long title of the Bill	Change the long title to include Article 174(c) and (d) of the Constitution of Kenya	The Bill has listed some Articles of the Constitution of Kenya of relevance to public participation but has excluded a key constitutional Article of relevance to public participation in the context of devolution namely the provisions of Article 174(c) and (d) of the Constitution of Kenya. This Article is necessary because the Bill if passed into law will regulate public participation at the two levels of government.
Section Interpretation	2: Cabinet Secretary	The law should provide that the Cabinet Secretary responsible for implementation is the Cabinet Secretary responsible for Public Service	Since public participation is one of the national values of governance, and taking into consideration that Public Service Commission is responsible for implementation of the values, the law should give this responsibility to Public Service Ministry. In designing performance of National Government and supporting the County Governments, the Public Service Commission would therefore inclusion of public participation as one of the components in performance measurement. This will also ensure stability in

			implementation of the Act since trends have showed that Public Service Commission has always been a ministry in all governments unlike Justice. At most counties level, this function is under Departments for Public Service hence this approach would promote uniformity
Section Interpretation	2: Public participation	The definition of public participation should include “planning, budgeting, monitoring, evaluation and auditing” as part of the decision-making processes for citizen engagement in decision making processes.	For full realization of the provisions of Article 1 of the Constitution on retention of the sovereign power by citizens in their governance and fulfilment of the provision of public participation as a principle and value of governance under Article 10 of the Constitution, the law should be explicit that the citizens shall be included in all levels of governance including the “planning, budgeting, monitoring, evaluation and auditing”.
Section 4: Objects of the Act	Add clause (e)	Include an objective on civic education for enabling or promotion of public participation.	Civic education is important ingredient for public participation. It is therefore important to integrate civic education into this Bill since the government can't promote public participation without conducting civic education.
Section 5: Scope of public participation	Clauses a, b, c and d	Change clauses 5(a), (b) and (c) to include implementation and (b) to also incorporate participation in planning, that is, a). “Formulation and implementation of policies”; b). Planning b). Planning budgeting and financial management c). Making and implementation of laws. Also add sub-clause d). to provide for public participation in oversight processes including financial audits and overall service delivery processes	The import of the proposed changes is to integrate citizen participation in all processes of public governance from policy making, planning, budgeting, implementation of plans and budgets, and financial and services delivery processes in line with Article 1 of the Kenyan Constitution.

		Rename clause 5(d) to 5(e)	
Section 6: Conduct of public participation	Section (2)	Include a section on (f) on interest and relevance of stakeholders	In Kenya major stakeholders have been biased by state organs in public participation whereby the organs have been undertaking direct consultations with the citizens /general public. By having two tiers of consultations will allow stakeholders to be consulted first before the general public are consulted.
Section 7 (2): Rights of a member of public in public participation	Additional clause (d)	A member of the public to be affected by the decision can be consulted/appear virtually	There are people who would be affected by the decision and may not be in the Country during the time public participation is on also the Kenyans living abroad have a right to participate and be consulted under the Constitution
Section 7(3): Rights of a member of public in public participation	Clause (3) Additional	Can also appear virtually.	The right to participate applies to all citizens whether living in the home country or in the diaspora
	Include additional clauses	Provision of adequate time to make submissions and presentations The public or entities should make presentations without state or public office interference The public should make submissions without any sanctions from the state or public office or political interference	This ensures right to freedom of expression as enshrined in the bill of rights stipulated in the Constitution
Section 8: Determination of	Clause (2)	Add also the authority of County Assemblies	This is because also County Assemblies are also responsible authorities similar to Parliament at the devolved governments

responsible authority			
	Clause (5)	Substitute Cabinet Secretaries with Permanent Secretaries	This is because the accounting officers are Permanent Secretaries but not Cabinet Secretaries
		The government Department to be responsible for implementation of the law should be Public Service Commission and not Ministry of Justice, whereby the law custodian is the Attorney General	We should have a reliable ministry leading implementation of Public Participation. We currently don't have Ministry of Justice and I don't trust that the AG can effectively spearhead lead Public Participation. Public Participation is one of the values of governance and we were in a meeting where it was indicated that overseeing implementation of the values is the responsibility of PSC. We believe that with an effective and strong PSC, Public Participation could be integrated into performance management with clear indicators. That the implementation of the bill should be charged on an independent body to coordinate PP and CE and ensure compliance. Same as Commission on Administrative Justice is for the Access to Information Act. Government ministry will never be keen to ensure compliance when its matters CE and PP to citizens. Am not convinced.
Schedule	Section (2) Subsection (3) (d)	Include also virtual option	To cater for those not present and those in the diaspora
	Section (5) subsection (3) (b)	There should be no charge for public information	If a charge is included it will limit the right to access to information and the state organ may describe unreasonable figures to limit that same rights
	Section (5) subsection (3) (c)	There should be no confidentiality for public information unless it's security information which is protected by law.	This clause may be used by state organs and public offices to deny information hence violation of the right to public information.
	Section (5)	This section should be removed.	Unreasonable circumstances is not defined by any law and is

	subsection (4) (a)		subject to wrong interpretation and hence might be used to violate the right to information
	Section (5) subsection (4) (b)	Remove Confidentiality requirements	These requirements will limit the right to information and hence they should be done away with.
	Section (5) subsection (5)	The nature and extent should be removed.	This is ambiguous and not specified in any law or regulations and might be used to deny public information.
	Section (8) subsection (3)	Remove the limitations by the nature and extent specified under this section	The nature and extend is not defined anywhere hence it is ambiguous and an hindrance to the right to freedom of expression
		The bill does not have redress mechanism and we recommend a whole section to be included	This should be included if any of the procedures is violated it can be corrected before the next procedure is taken. This will reduce petitions or ligation which occurs after the while public participation process is undertaken. This will reduce costs and time spend on petitions and litigations
		The bill is very weak on feedback and we recommend a whole section to be included	This will ensure validation, review, monitoring and evaluation of the process of public participation

General Recommendation:

Civic Education is one of the major National and County Government functions as stipulated in the Constitution and the County Government Act. Civic education is not mentioned anywhere in the bill. It is our considered view that civic education precedes any bill set for public participation, hence we recommend a whole part of the bill to include civic education and budget allocation on it.. This will make the people participate in meaningfully in the public participation process.

The bill still lacks the following key issues:

- lack of minimum standards as to what comprises adequate, effective and meaningful participation especially at the community level
- Inadequate framework for ensuring the effective participation and involvement of the marginalized, vulnerable and minority groups in county governance and development

- Inadequate safeguards of public interest in public participation processes.
- Inadequate complaint handling, reporting & feedback mechanisms

Other emerging issues/Gaps

1. Application of the Public participation Bill in relation to other laws
2. Scope of the Public Participation Bill
3. Public participation related rights
4. Duty of both National and county government
5. Responsibilities of county and decentralized units (CoK Articles 176 (2), 184 and 186 & 4th Schedule Part 2 (14), 187, 189, CGA Section 48, UA&C Act 2011 - Urban (city, municipality, town and market) units, Sub County, Ward, Village units)
6. Inter-governmental and inter-agency coordination
7. Considerations and minimum standards in the conduct public participation processes
8. Publication of specified public participation guidelines by each responsible authority
9. Rights and duties of a member of the public
10. Access to information for public participation
11. Provisions on civic education and awareness
12. Public participation planning and financing
13. National and County Government Public Participation Fund
14. Enforcement of public participation principles
15. County legislation on the Conduct of Local Referenda (Section 90 of County Government Act) and also on National referendum
16. The conduct and modalities of meetings in various fora;
17. Mechanisms, processes and procedures for public participation at different levels;
18. Receipt, processing and consideration of petitions and complaints by members of the public;
19. Notification procedures;
20. Procedures for organizing, holding and facilitating public meetings and hearings;
21. Inclusion and involvement of the marginalized and vulnerable in public participation fora;
22. Matters and decisions for which public participation is required;
23. The rights and duties of members of the public; and

24. Any other matter that enhances public participation.
25. Maximum disclosure of information of public interest held by public authorities;
26. Any limitations on access to information that comply with the Constitution and applicable laws including international human rights laws and convention to which Kenya is a party;
27. Procedures to request information of public interest either free of charge or at reasonable cost and mechanisms for independent review in cases of refusal; and
28. Protection for persons (whistle-blowers) who may disclose or release information in good faith that they reasonably believe, at the time of disclosure, to be true and of public interest against legal, administrative or disciplinary sanctions.

This is a memorandum by the following fourteen (14) members of the KDCWG Steering Committee:

1. Michael Mburu, Central Region Economic Block
2. Sherry Muthaura, Central Region Economic Bloc
3. Abdulahi Mohamed, Frontier Counties Development Council
4. Fatuma Yusuf, Frontier Counties Development Council
5. Raya Fahamu, Jumuia ya Kaunti za Pwani
6. Malusha Abedi, Jumuia ya Kaunti za Pwani
7. Chris Owalla, Lake Region Economic Bloc
8. Fridah Jausiku, Lake Region Economic Bloc
9. Samuel Talala Sikawa, Narok Kajiado Economic Bloc
10. Juliana Rono, Narok Kajiado Economic Bloc
11. Benedine Kipruto, North Region Economic Bloc
12. Evans Kibet, North Region Economic Bloc
13. Jacob Ngumi, South Eastern Region Economic Bloc
14. Damaris Kavete, South Eastern Region Economic Bloc

Signed by: Evans Kibet Boss

Title: Convener, KDCWG.

Signature:



Date: 6th November, 2023.

KENYA LAW REFORM COMMISSION

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When replying please quote

Ref. No. **KLRC/8/64VOL.II/(55)**
and Date

6TH February, 2024

.....20.....

The Clerk,
Clerks Chambers
National Assembly
Parliament Buildings
P O Box 41842 – 00100
Nairobi, Kenya.
clerk@parliament.go.ke

Dear Jeremiah,

RE: SCRUTINY OF THE PUBLIC PARTICIPATION BILL 2023 (National Assembly Bill No. 52 of 2023)

The above refers.

Under Section 6 (1) (c) of the Kenya Law Reform Commission Act, No. 19 of 2013, KLRC is mandated to provide advice technical assistance and information to the national and county governments with regard to the reform or amendment of a branch of the law. In light of this, KLRC hereby forwards the following comments in consideration of the Public Participation Bill, 2023 (National Assembly Bill No. 52 of 2023).

PROVISION IN THE BILL	KLRC PROPOSAL	RATIONALE
2.	Amend the definition of Cabinet Secretary;	The definition states that it "includes" the Attorney General. This may pose as a challenge in identifying the particular state

PROVISION IN THE BILL	KLRC PROPOSAL	RATIONALE
		officer to be designated as the Cabinet Secretary. This challenge may affect accountability on any responsibility vested in the Cabinet Secretary.
5.	Amend the clause to incorporate the full cycle of government action. The scope of public participation should be expanded definitely to include: • implementation of policies; • review of policies; • review or reform of legislation; • development and implementation of government programmes and projects; and • implementation of government projects.	The scope of public participation as provided under Clause 5 is limiting. The jurisprudence around public participation has grown and it is important to crystallize it and define it. An open ended cheque may see the public participation value and principle be abused both ways.
5 (d)	Delete.	The scope of public participation is a substantive issue that must be canvassed in the Act and should not be a reserve of subsidiary legislation. If retained a conflictual relationship may ensue.
6 (2)	In the chapeau: Amend Clause 6(2) by inserting the word "office" immediately after the word "public".	For grammatical sense
6(2) (a), (b) and (c)	Delete the word "decision".	The word "decision" is too broad and vague. State organs and public offices make decisions every day.

PROVISION IN THE BILL	KLRC PROPOSAL	RATIONALE
	Consider using a more specific term that aligns with the scope of public participation.	Use the terminology adopted under the proposed amendment of Clause 5 on the scope of public participation.
7(1)	Amend clause 7 to read as follows: “Where a member of the public or an entity elects to attend a public participation exercise, the member of public or entity has the right to— (a) make presentations either orally or by way of written submissions to a state organ or public office on the subject matter as may be determined;	The right to participate is not absolute or mandatory and should not be couched in mandatory terms. Where a right is crafted in mandatory terms the state bears a burden that may be costly in the long run. Tie the election to participate with conditions that must be fulfilled by the person or entity that chooses to participate in order for this right to crystallize.
	Amend the clause to read as: “the participation of women, youth, persons living with disabilities, children, older persons or any other marginalized groups in decision making processes.”	Expand the constituency of persons mentioned to ensure inclusivity. Aligns with the constitutional definition of marginalized groups.
8(1).	Delete 8 (1)	Irrelevant
8(5).	Delete the words “Cabinet Secretaries” and replace with the words “A Cabinet Secretary”.	Drafting is done in singular
9(5).	Expound or delete.	It is not clear what aspect of the Statutory Instruments Act shall apply

PROVISION IN THE BILL	KLRC PROPOSAL	RATIONALE
		to the guidelines. Is it the process (formulation, consultation, participation, scrutiny, exemption, approval etc, categorization or substance?
12(4)	Amend the sub-clause to include information on: • a brief on the activity that necessitated the public participation (scope); • the budget • list of persons or entities likely affected • mode/methodology of public participation • proof of notice • proof of attendance • comments received and how they were dealt with	This sub-clause is limiting and needs to be expanded to provide proof of public participation. Public participation should not be a tick in the box event.
14(1).	Delete the word "regulations" and replace with "a statutory instrument"	Regulations are just a type of statutory instruments. The clause should include the general term "statutory instruments".
14(2) (b).	Delete.	Too general and vague and goes contrary to Article 94(6) of the Constitution.
COMMENTS ON THE SCHEDULE		
1.	Delete (c), (d), (e), (f) and (g)	Repetitive; have been mentioned in the Bill.
2(3)	Consider amending	The word "programme" is not referenced in 2(1).

PROVISION IN THE BILL	KLRC PROPOSAL	RATIONALE
4.	Delete.	Repetition of 2.

Further, KLRC is mandated to keep under review all the law and recommend its reform to ensure that it conforms to the letter and spirit of the Constitution, that it systematically develops the law in compliance with the values and principles enshrined in the Constitution and to ensure that the law is consistent, harmonized, just, simple, accessible, modern and cost effective in application. KLRC is also required to ensure that in reviewing the law the respect for and observance of treaty obligations in relation to international instruments that constitute part of the law of Kenya by virtue of Article 2(5) and (6) of the Constitution is upheld. In light of this, KLRC renders the following advice on the Public Participation Bill, 2023 (National Assembly Bill No. 52 of 2023).

NO.	GUIDING PRINCIPLE	KLRC ADVICE
1.	Does the legislative proposal conform to the letter and spirit of the Constitution?	The Bill may offend the doctrine of separation of powers – Cabinet Secretary is given the power to make “regulations” for any other matter required to be prescribed under this Act. The bill is anticipated to apply across the three arms.
2.	Is the legislative proposal in compliance with the values and principles enshrined in the Constitution?	If enacted, there may be a compromise on accountability. The relationship between the responsible authority and state organ or public office is vague.
3.	Is the legislative proposal consistent, harmonized, just, simple, implementable modern and cost effective in application?	- Is it possible to identify an independent existent institution that can be vested with the function to monitor and assess public participation within the Executive? - KLRC plays a very central role in public participation exercises by institutions and provides measurable technical support to institutions during

NO.	GUIDING PRINCIPLE	KLRC ADVICE
		public participation exercises. The AG may delegate this function to KLRC. • A central institution that monitors public participation may change the perception that it is an exercise in futility. • Some conflictual provisions noted against SIA which need clarity
4.	Is the respect for and observance of treaty obligations in relation to international instruments that constitute part of the law of Kenya by virtue of Article 2(5) and (6) of the Constitution is upheld?	No issue on this arose.

We conclude by stating that KLRC is committed to ensuring that legislation is drafted to the highest standards possible to promote their legal effectiveness, clarity and intelligibility to anticipated users.

As always, we thank you for your continued cooperation.

Yours sincerely,



Joash Dache, MBS

SECRETARY/ CHIEF EXECUTIVE OFFICER

Copy to: Ms. Christine A. Agimba, Chairperson - To see File copy.



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COUNCIL OF GOVERNORS

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Our Ref: COG/4/2/1B Vol. 2 (70)

8th November 2023

Mr. Samuel Njoroge,
The Clerk of the National Assembly,
P.O Box 41482-00100,
Nairobi.

Dear Mr. Njoroge

**LETTER FORWARDING THE LEGISLATIVE MEMORANDUM ON THE PUBLIC PARTICIPATION BILL,
2023**

Greetings.

The Council of Governors has reviewed the Public Participation Bill, 2023 and hereby forwards the legislative memorandum attached herewith for your consideration.

Please accept our highest esteem and regards.

Yours sincerely,

Mary Mwiti
Chief Executive Officer



COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE PUBLIC PARTICIPATION BILL, 2023

To:
THE NATIONAL ASSEMBLY

From:
THE COUNCIL OF GOVERNORS

MEMORANDUM ON THE PUBLIC PARTICIPATION BILL, 2023

The Council of Governors,

In recognition of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

In further recognition of Article 6 (2) that governments at the national and county levels are distinct; and

Aware of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution.

The Council hereby notes as follows on the Public Participation Bill (the Bill):

A. General Comments

The Office of the Attorney developed a policy on public participation which was finalized but is yet to be approved. The Policy, once approved would provide a guide to the development of the Public Participation law, this is in line with good global practices of policy preceding law.

Further we wish to note that 37 out of 47 Counties have existing and operational Citizen Participation Acts which the proposed bill can borrow from. Some of the key policy issues in the laws are incorporated into our proposal to enrich the Bill.

Premised on the above, the Council wish to submit as following on the Bill;

B. Comments on Specific Provisions:

Section of the Bill	Provision of Section in the Bill	Proposed Amendment	Rationale/Justification for Amendment
Long title	AN ACT of parliament to provide for a general framework for effective public participation; to give effect to the constitutional principles of democracy and participation of the people under Articles 10(2), 118, 196, 201(a) and 232(1)(d) of the Constitution; and for connected purposes	Amend to read as follows; AN ACT of parliament to provide for a general framework for effective public participation; to give effect to the constitutional principles of democracy and participation of the people as provided for in the Constitution; and for connected purposes	The specific provisions of the Constitution are outlined under section 4 as proposed herein below.
4(a)	The Object of this Act is to enhance, promote and facilitate public participation in governance processes and in particular to; (a) give effect to the principles of public participation as provided for in Articles 10(2), 118, 196, 201(a) and 232(1)(d) of the Constitution	Amend to read as follows; give effect to the principles of public participation as provided for in Articles 1(2), 10(2), 35, 69(1)(d), 118, 174(c) and (d), 184(1)(c), 196, 201(a) and 232(1)(d);	This captures the entire scope of public participation and citizen engagement as envisioned by the Constitution of Kenya
		Insert a new provision on guiding principles; Public Participation in governance processes shall be guided by the following principles – (a) That public participations shall be a two-way process— with feedback to citizen given on decisions made,	The Council's proposal provides for a guiding structure when implementing the Act.

		actions taken and results achieved by the county government; (b) That public participation shall be a continuous process and not a one-time event. (c) That the public, communities and organizations that shall be affected by a decision shall have a right to be consulted and involved in the decision-making process; (d) Provision of timely and relevant information, accessible to all members of the public so they are aware and are can engage in decisions that affect them; (e) Adherence to the principles under Article 10 and chapter Six of the Constitution; (f) Adherence to the principles of public participation prescribed by Section 87 of the County Governments Act and any other written law; and (g) Promotion of sustainable decisions recognizing needs and interests of all participants including decision makers.	
12(4)	The annual report shall contain- (a) a description of any complaints made against the institution in respect of public participation, the action taken and the	<i>Amend to include the following sub- clauses;</i> c) An overview of the structures established in the responsible authority to facilitate public participation including how information is	The proposal by the Council will ensure an elaborate and comprehensive report

	period within which the complaint was addressed; and (b) any other information that the responsible authority may consider relevant.	communicated, inputs received and feedback processed. (d) How issues raised in the previous report by the National Assembly have been addressed in the year under review? (e) Details of the number of people that have been engaged in the particular process and at what level (National, County, sub-County, ward and village)? (f) How the principles of public participation have been inculcated in the respective authority's processes;	
14	The Cabinet Secretary may make regulations for the better carrying into effect of the provisions of this Act	Amend to read as follows; The Cabinet Secretary, in consultation with County Governments may make regulations for the better carrying into effect of the provisions of this Act	This Bill also applies to County Governments as seen under sections 8 and 9 among others.
Schedule	General Public Participation Guidelines	Insert new clause as below; 1 (2) in determining what is meaningful and important, the authority shall take into consideration (a) Clarity of the subject matter; (b) Structure and process for public participation; (c) Access to information; (d) Commitment to the process;	The Council's proposal allows for uniformity of standards, policies and methodologies across the two levels of governments and also allows for the harmonization of national and county policy and methodologies relating to public participation in line with the County Public Participation Guidelines

		(e) Inclusive and effective representation; (f) A belief in the value of public input; (g) Ability to engage and the standing of the participants; (h) Demonstration of transparency in the process.	
Schedule 4	A state organ or public office shall give the public adequate notice to make their input on the issues	<i>Amend to read as follows;</i> A state organ or public office shall give the public 14 day notice to provide their input on the issues	Timelines should be clear to avoid confusion and different interpretations.

JOINT KIAMBU CSOs MEMORANDUM

Submissions of the proposed public Participation Bill 2023

Submitted to:

The Clerk

National Assembly

Joint submission by the following Civic Society Organisations:



CLAUSE/SECTION	PROPOSED AMENDMENT	JUSTIFICATION
Title	Amend to include civic education	Public Participation should be both qualitative and quantitative where the qualitative bit is dependent on civic education.
Section 2 Definition of Public Participation	Public participation in government is any process that involves members of the public in government decision-making. It seeks and facilitates the involvement of those affected by, or interested in, a government decision, including individuals; state, local, Tribal, and territorial governments; non-profit organizations; educational institutions; businesses; and other entities.	There should be a difference between Public Participation and Community engagement.
Section 4 [a]	Add Article 1 to the objects of the Bill	To give effect to the Sovereignty of the People as the main philosophy of Public Participation
Section 4[d]	Amend to make clear that Public Awareness includes civic education.	Public Awareness is a vague phrase open to abuse and does not necessarily include civic education which is core to public participation.
Section 5	Add the words 'in governance' between the word's participation and on Add the word inclusive between the words facilitate and public. and also replace the word relating with including	The scope as it is limited and should be expanded in order to be more inclusive and cover all aspects of governance
Section 6[2]	Introduce a clause on Sovereignty of the People	
Section 6[2][e]	Add the word accountability to the list provided	
Section 7	Add a new clause 7[d] – right to receive timely and sufficient information prior to the Public Participation to receive feedback where timely is interpreted to mean at least	Give reasonable and definite time for the public to prepare their submissions

Section 7	two weeks before the Public Participation forum. On Credibility and integrity of the process Part C that the state organ or public body shall not engage in conduct involving dishonesty, fraud , deciet , misrepresentation or discrimination	Any withholding of important budget documents from members of public is equivalent dishonesty, deciet and discrimination. The proposed Authority below in section 8 will ensure all key budget documents are provided publicly.
Section 8	Establish an Independent Body to manage public participation	To ensure compliance and Monitoring and Evaluation on matters Civic Education and Public Participation
Section 12[4]	Add new clauses on description of financial implications Add another clause on number and description of matters subjected to public participation and Civic education. Add another clause on the reporting of disaggregated data on attendance on public participation Add another clause on reporting of the Public Participation reports filed	Hold the bodies carrying out Public Participation accountable
Section 13	Include offences	
On the statement of objects and reasons	The Bill proposes to provide a mechanism to facilitate effective and well coordinated public participation.	In addition to the constitutional principles of public participation, Civic education has seen historical neglect which has undermined the efforts to inculcate a culture of meaningful and effective public participation and involvement in consultation in matters especially in Public Finance Management as the policy provided cannot take effect if the Citizens are kept at bay privy to the knowledge of how the Government Processes operate.

(i) D/AASC

Please deal

25/01/24

KAM
KENYA ASSOCIATION
OF MANUFACTURERS
Driving Global Competitiveness



(ii) GZA

Please deal

for

29/1/24

15

(iii) I. Enyesa
2. 2017

Please note

for

29/1/24

KAM/i0/14/r1/mb/jw/AM/2024

18th January 2024

Samuel Njoroge

The Clerk, National Assembly

Parliament Buildings

P.O Box 41842 - 00100

NAIROBI

Dear Mr. Njoroge,

RE: SUBMISSION OF KAM MEMORANDUM ON THE PUBLIC PARTICIPATION BILL 2023

The Kenya Association of Manufacturers (KAM) presents its compliments and appreciates the continued support.

Following the publication of the Public Participation Bill 2023, we wish to submit our Memorandum.

The purpose of this letter is to therefore submit the Kenya Association of Manufacturers' Memorandum on the Public Participation Bill 2023.

Feedback may be communicated to us via our physical address and advance feedback email to ceo@kam.co.ke on mobile +254 722 370446.

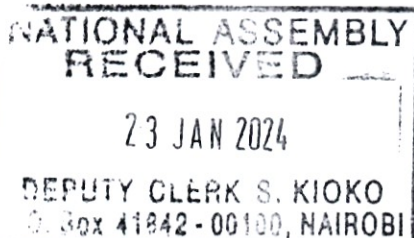
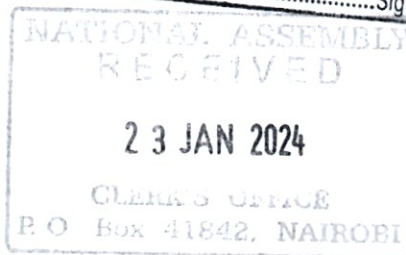
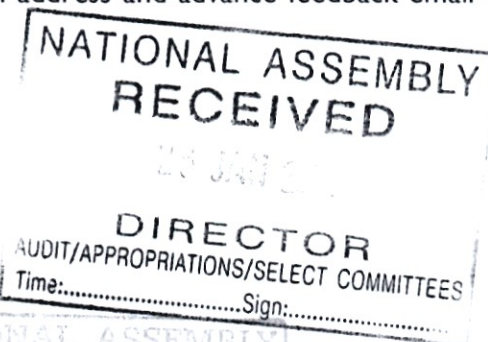
Your early feedback will be appreciated.

Yours sincerely,

Anthony Mwangi

CHIEF EXECUTIVE

Encl.





MEMORANDUM ON THE PUBLIC PARTICIPATION BILL, 2023

Submitted to

**THE CLERK
NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS P O BOX 41842-00100, NAIROBI**

Presented By

**ANTHONY MWANGI
CHIEF EXECUTIVE
THE KENYA ASSOCIATION OF MANUFACTURERS**

NOVEMBER 2023 – NAIROBI, KENYA

1.0 INTRODUCTION

Kenya Association of Manufacturers (KAM) is the leading business membership organization in East Africa that plays a key advocacy role on behalf of manufacturers in Kenya and in the region through its strong linkages with all sectors of the economy. KAM has over 950 members and represents over 40% of Kenya's manufacturing value-added industries.

KAM represented Kenya's manufacturing sector interests in the East Africa Trade integration process through the design, ratification, and implementation of the Customs Union, and the Common Market Protocol. The integration process in East Africa has been successful with Kenya Playing a critical role. The EAC region integration is expected to spur the manufacturing sector to enhance intra-EAC trade in value-added products and thus grow the economies of the region.

KAM has a membership of manufacturers across thirteen manufacturing sectors and Services ranging from Food and Beverage, Pharmaceutical; Automotive; Chemical and Allied; Metal and Allied; Paper and Paperboard; Leather and Apparel; Textile and Apparel; Plastics and Rubber; Timber, Wood, and Furniture; Electric and Electronic; Building, Mining and Construction; Agro- Processing.

2.0 GENERAL COMMENTS:

1) Funding for Public Participation

Public participation has been marked by inadequate, unpredictable, and insecure financing. We propose that, every financial year, a certain percentage of the total budget under both national and county levels of government, should be allocated to public participation. This will ensure that there is adequate and inclusive process that is budgeted for by the government.

2) General Public Participation Guidelines

We propose that the guidelines:

- Expand on the mechanisms for providing adequate notice for public participation.
- Introduces guidelines that guarantee transparent documentation and dissemination of final decisions made based on public input.
- Strengthens provisions for fairness, equality, and accessibility for all participants, including those with disabilities or limited language proficiency.

By refining these sections with more comprehensive provisions, clearer guidelines, and enhanced accessibility, the public participation process in Kenya could become more inclusive, effective, and transparent.

3.0 PROPOSED AMENDMENTS TO THE PUBLIC PARTICIPATION BILL, 2023 (specific areas)

In response to the call for public participation in the afore-referenced Bill, we propose the following amendments to be considered before the Bill is enacted.

KAM MEMORANDUM ON THE PUBLIC PARTICIPATION BILL, 2023			
	CLAUSE	PROPOSAL	JUSTIFICATION
1.	6 (1) A state organ or public office shall provide reasonable and meaningful opportunities for public participation. (2) In determining what is reasonable, the state organ public shall take into consideration the-	We propose that this clause is amended by adding more standards ensuring that diverse voices are adequately heard and represented. To add the following clauses: <i>(f) Community Engagement based on the relevance and interest of the subject matter to the public.</i> <i>(g) Timeliness and Notification standards for providing adequate notice to the public.</i> <i>(h) Feedback Mechanisms feedback collection to assess the effectiveness of the participation process.</i> <i>(i) Accessibility Measures to ensure provisions for accommodating diverse needs.</i>	Section 6 of the bill mentions the provision of "reasonable and meaningful opportunities" for public participation without defining clear standards for determining reasonableness. We propose the inclusion of specific criteria or metrics to ensure consistent and fair implementation across various scenarios. The state organ should encourage a consultative approach in determining reasonableness, involving stakeholders, experts, and the public in the development and review of standards for public participation opportunities.
2.	7. (1) A member of the public or an entity likely to be affected by a decision shall	We propose the addition of a subclause to create an environment that prioritizes accessibility for all and guarantees protection	• This proposal is based on the fact that the clause grants rights to individuals or entities

	have the right to participate in the decision-making processes.	against discriminatory practices or undue influence during the public participation process. The additional subclause will be as follows: 4) The responsible authority shall institute measures to prevent undue influence, coercion, or manipulation of participants during public participation.	likely to be affected but lacks clarity on how these rights will be protected. To safeguard the public participation process from discrimination, undue influence, or manipulation, ensuring fair and unbiased engagement
3.	9. (1) Each responsible authority shall develop Development of guidelines for undertaking public participation in the respective institution.	We propose to amend this clause by making it mandatory for responsible authority to develop guidelines for public participation and to further add to the to read as follows: (2) The guidelines developed by a responsible authority under subsection (1) shall include the requirements set out in the general guidelines for public participation in the Schedule and Shall a) include specific requirements beyond what is required under the general guidelines for public participation under the Schedule. b) Provide for the manner in which any requirements of the specific or general guidelines may be satisfied.	This proposal is based on the following: - To establish a clear and accessible method for the dissemination of specific guidelines to the public, ensuring easy access and understanding. - Expand on the mechanisms for providing adequate notice for public participation. - Include guidelines that guarantee transparent documentation and dissemination of final decisions made based on public input. - Strengthen provisions for fairness, equality, and accessibility for all participants, including those with disabilities or limited language proficiency
4.	12. (1) Each state organ or public office shall prepare an annual report on public participation	We propose to amend and add additional clause 12 (4) requiring that the reports be published on the website of the relevant institution and hard copies of the same are made available to the public.	The proposal is based on the following: By combining both digital and physical means of publication, institutions cater to a broader spectrum of people, enhancing inclusivity,

	at the end of each financial year. (2) Where the state organ or public office relates to institution that is required by any written law to submit an annual report, the report referred to under subsection (1) shall form part of its annual report. (3) The annual report prepared under subsection (1) shall be tabled, in the case of a national government institution, the National Assembly and the Senate, or, in the case of a county government institution, the respective County Assembly not later than three months after the of the financial year to which the report relates	To read as follows: <i>12(4) Reports of public participation shall be mandatorily published on the official website of the relevant institution and concurrently disseminated in hard copy format to all stakeholders and interested parties.</i>	transparency, and the credibility of their public participation efforts. To further promote Transparency and Accessibility, Inclusivity, Accountability, and Legal Compliance.
5.	Clause 13 General penalty A person who contravenes a provision of this Act, commits an offence and shall upon conviction	We propose to amend this clause to increase the fine to Kshs. 1,000,000 or an imprisonment for a term not exceeding one year. To read as follows:	We make this proposal based on the following justifications: The proposed fine of Kshs. 300,000 or imprisonment of six months is too lenient.

	be liable to a fine not exceeding three hundred thousand shillings or imprisonment for a term not exceeding six months , or to both	13 A person who contravenes a provision of this Act, commits an offence and shall upon conviction be liable to a fine not exceeding One Million shillings or imprisonment for a term not exceeding six months , or to both	• Proper, inclusive, and thorough public participation is a cornerstone of democracy and good governance. • Where a public body does not conduct proper public participation as outlined in the Bill, they should be punished accordingly. • This will act as a deterrent and ensure that all public bodies adhere to their duty to keep the public informed on issues that affect them. • We therefore propose an increase in the penalty outlined in the Bill.
	8. (1) This section determines what body is the responsible authority for the purposes of this Act.	We propose that this clause is amended to designate the specific roles, responsibilities, and collaboration mechanisms between responsible authorities.	The proposal is based on the following: • The clause has specified responsible authorities for different bodies without delineating clear roles or potential overlaps. • The proposal will include provisions for conflict resolution or coordinated efforts in cases of overlapping jurisdictions
2.	Schedule General Public Participation Guidelines Section 2 (1) (1) A state organ or public office shall give the public adequate notice to make their input on the issue.	We propose to amend this clause to mandate state and public offices to give 45 days for the public to give their input. To read as follows: Section 2 (1) (1) A state organ or public office shall give the public not less than 45 days to make their input on the issue.	We make this proposal based on the following justifications: • Leaving the amount of time that state and public offices can give the public to provide input may lead to abuse and inconsistency. • Some agencies only provide less than one week for the public to give their feedback. This is not enough time and makes the whole process of public participation ineffective and just a formal exercise.

			We therefore propose for 45 days as the minimum amount of time for which the public can give their input on any issue.
3.	Schedule General Public Participation Guidelines Section 6 Processing of responses	We propose to include a paragraph that mandates state organs or public offices to provide written feedback to the persons or companies that submitted written memoranda.	We make this proposal based on the following justifications: - A lot of people and companies submit written memoranda in response to a request for public participation by a public office. - However, the public office rarely acknowledges receipt of the written memoranda. - The person or company that submitted the memorandum therefore feels unheard and their input as inconsequential. - This may discourage them from submitting feedback in the future.
4.	New clause Dispute Resolution	We propose for the insertion of a new clause on dispute resolution .	We make this proposal based on the following justifications: - Some public issues such as policies and bills often evoke great public interest. - It is therefore inevitable that differences may arise between members of the public and the state organ or public office. - We therefore propose for a dispute resolution mechanism to effectively cater for the disputes.



**HENNET CSO Memoranda 2024
On the Public Participation Bill (No. 52 of 2023)**

**Presented to
The Parliamentary Broadcasting and Library Committee of the 13th Parliament of Kenya
Copied to S. Njoroge, CBS, Clerk of the National Assembly**

Date: 13th February 2024

CIVIL SOCIETY INPUTS AND COMMENTS

Introduction

This memorandum is submitted following a Public Notice dated 26th January by the National Assembly 13th Parliament in the matter of consideration by the national assembly of the public participation Bill (National Assembly Bill No. 52 of 2023).

HENNET CSOs Comments on the Public Participation Bill, 2023

Health NGOs Network (HENNET)				
S/No.	Regulation/Clause	Issue of Concern	Justification	Recommendation
	Title	The title of the Bill	Change the Name of the Bill to "The Civic Education and Public Participation Bill 2023"	Civic education and public participation are closely linked and intertwined. They are like two sides of the same coin. Importantly, it not possible to have meaningful public participation without civic education. In the event that it is not possible to change the name of the Bill in its current form, then specific clauses on civic education should still be included in the Bill to ensure that civic education is adequately considered and covered.
	Long Title	The long title of the Bill	Change the long title to include Article 174(c) and (d) of the Constitution of Kenya	The Bill has listed some Articles of the Constitution of Kenya of relevance to public participation but has excluded a key constitutional Article of relevance to public participation in the context of devolution namely the provisions of Article 174(c) and (d) of the Constitution of Kenya. This Article is necessary because the Bill if passed into law will regulate public participation at the two levels of government.
	Part I Preliminary	Definition of public participation	The definition is limiting and excludes other programs that are not legislative but require public participation such as the budget process	Recommend the adoption of the definition in the Draft Public Participation Policy that states, "public participation refers

			and electoral processes	to the process by which citizens, as individuals, groups or communities (also known as stakeholders), take part in the conduct of public affairs, interact with the state and other non-state actors to influence decisions, policies, programs, legislation and provide oversight in service delivery, development and other matters concerning their governance and public interest, either directly or through freely chosen representatives
	Section 2: Interpretation	Cabinet Secretary	The law should provide that the Cabinet Secretary responsible for implementation is the Cabinet Secretary responsible for Public Service	Since public participation is one of the national values of governance, and taking into consideration that Public Service Commission is responsible for implementation of the values, the law should give this responsibility to Public Service Ministry. In designing performance of National Government and supporting the County Governments, the Public Service Commission would therefore inclusion of public participation as one of the components in performance measurement. This will also ensure stability in implementation of the Act since trends have showed that Public Service Commission has always been a ministry in all governments unlike Justice. At most counties level, this function is under Departments for Public Service hence this approach would promote uniformity
	Section 2: Interpretation	Public participation	The definition of public participation should include "planning, budgeting, monitoring, evaluation and auditing"	For full realization of the provisions of Article 1 of the Constitution on retention of the sovereign power by

			as part of the decision-making processes for citizen engagement in decision making processes.	citizens in their governance and fulfillment of the provision of public participation as a principle and value of governance under Article 10 of the Constitution, the law should be explicit that the citizens shall be included in all levels of governance including the "planning, budgeting, monitoring, evaluation and auditing".
	Section 4: Objects of the Act	Add clause (e)	Include an objective on civic education for enabling or promotion of public participation.	Civic education is important ingredient for public participation. It is therefore important to integrate civic education into this Bill since the Government can't promote public participation without conducting civic education.
	Section 5: Scope of public participation	Clauses a, b, c and d	Change clauses 5(a), (b) and (c) to Include implementation and (b) to also incorporate participation in planning, that is, A). "Formulation and implementation of policies"; B). Planning C). Planning budgeting and financial management D). Making and implementation of laws. Also add sub-clause d). to provide for public participation in oversight processes including financial audits and overall service delivery processes	The import of the proposed changes is to integrate citizen Participation in all processes of public governance from policy making, planning, budgeting, implementation of plans and budgets, and financial and services delivery processes in line with Article 1 of the Kenyan Constitution.
	Section 6: Conduct of public participation	Section (2)	Include a section on (f) on interest and relevance of stakeholders	In Kenya major stakeholders have been biased by state organs in public participation whereby the organs have been undertaking direct consultations with the citizens /general public. By having two tiers of consultations will allow stakeholders to be consulted first before the public are consulted.

Part II	Section 6	Public Participation	The Bill suggests 'reasonable and meaningful' as the standard for all participation opportunities extended by state agencies. In its current form however, the lack of a clear definition or threshold for 'meaningful' opportunities sets the success of the new bill in doubt. The strength of any legislation on public participation stems from how well it can provide a framework for 'meaningful' participation and, in doing so, boldly set a course for an inclusive, participatory democracy.	While the threshold for 'reasonable' is left to state agencies to determine, considerations of reasonability proposed are the nature of the legislation or decision, its importance to and impact on the public, as well as the need for inclusive and effective representation. Recommendation: Add Clause 6(f) to state "the state organ shall in providing meaningful and reasonable opportunities be required to conduct public participation in all the 47 counties in the case that the subject matter impacts all citizens.
	Section 12(1)		All reports for all public participation should be availed and not selected few.	Recommend addition of the word 'ALL' "Each state organ or public office shall prepare, publish, and disseminate to the public using appropriate channels, the annual report on all public participation.
	Section 12 (4)		The section outlines the specific elements to be included in the report, aiming for comprehensive coverage. However, its brevity may inadvertently restrict the scope. Enhancements are needed to ensure all relevant aspects are adequately addressed.	1. Recommend the addition of the following. 2. Summary of all parties that participated in the said notice for public participation. 3. Summary of feedback collected and report on what was considered, what was not considered and reasons for not consideration. 4. Demographic analysis of the number of people engaged. 5. Summary engagement methods used; barriers

				of participation encountered. 6. The call for public participation and the responses on the same by public including matters raised which were outside the focus area. 7. For descending voices or supports, there is a need for the threshold of the proportion which is of supporting or contrary opinion on the matter.
	General public guidelines 2(1)	A state organ or public office shall be given adequate notice to make their input on the issue	Adequate notice is ambiguous and can be misinterpreted	The timeframe should be specified and clearly indicated in the clause. Recommend notice not less than 21 days
				Recommend insertion of (h) Organized networks and coalition groups.
	General public guidelines 3(2)	Shall take 'all necessary measures' to ensure the participation of persons with disability in public participation process	Majority of these persons might be left out in the processes due to inconsistent implementation of the clause due to lack of clarity on the necessary measures to be affected	Improve by being more specific on what all necessary measure entail and enforcement mechanism consequences of noncompliance.
	General public guidelines 3(3)			Where the targeted participants are not conversant with the national languages, the state organ or public office shall provide an interpreter for those participants who wish to make their remarks in their local language and sign language when required. Recommend the addition of sign language.
	General Public Participation Guideline 3(4)	A state organ shall give the public adequate notice to make their input on issues	Decision on timeframe will still be at the discretion of the state organ as it is currently	Specific bare minimum timeline should be provided. Recommend a time not less than 21 days.

	Clause (5)	We reaffirm Cabinet Secretaries as the responsible officers	This is because Cabinet Secretaries should have Authority over their Ministries
		The Government Department to be responsible for implementation of the law should be Public Service Commission and not Ministry of Justice, whereby the law custodian is the Attorney General	We should have a reliable ministry leading implementation of Public Participation. We currently don't have Ministry of Justice and I don't trust that the AG can effectively spearhead lead Public Participation. Public Participation is one of the values of governance and we were in a meeting where it was indicated that overseeing implementation of the values is the responsibility of PSC. We believe that with an effective and strong PSC, Public Participation could be integrated into performance management with clear indicators. That the implementation of the bill should be charged on an independent body to coordinate public participation (PP) and Civic Education (CE) and ensure compliance. Same as Commission on Administrative Justice is for the Access to Information Act. Government Ministry will never be keen to ensure compliance when it matters Civic Education (CE) and public participation (PP) to citizens.
Section 12	Section 12 (1)	Reporting by the responsible Ministry and Cabinet Secretary	Each year the Ministry should produce and publicize an annual report on public participation inclusive of a section of the financial expenditures
Schedule	Section (2) Subsection (3) (d)	Include also virtual option	To cater for those not present and those in the diaspora

	Section subsection (3) (b)	(5) There should be no charge for public information	If a charge is included it will limit the right to access to information and the state organ may describe unreasonable figures to limit that same rights
	Section subsection (3) (c)	(5) There should be no confidentiality for public information unless it's security information which is Protected by law.	This clause may be used by state organs and public offices to Deny information hence violation of the right to public information.
	Section (5)	This section should be removed.	Unreasonable circumstances is not defined by any law
	subsection (4) (a)		subject to wrong interpretation and hence might be used to violate the right to information
	Section (5) subsection (4) (b)	Remove Confidentiality requirements	These requirements will limit the right to information and hence they should be done away with.
	Section (5) subsection (5)	The nature and extent should be removed	This is ambiguous and not specified in any law or regulations and might be used to deny public information.
	Section (8) sub section (3)	Remove the limitations by the nature and extent specified under this section	The nature and extend is not defined anywhere hence it an ambiguous and an hindrance to the right to freedom of expression
		The bill does not have redress mechanism and we recommend a whole section to be included	This should be included if any of the procedures is violated it can be corrected before the next procedure is taken. This will reduce petitions or ligation which occurs after the whole public participation process is undertaken. This will reduce costs and time spend on petitions and litigations
		The bill is very weak on feedback and we recommend a whole section to be included	This will ensure validation, review, monitoring and evaluation of the process of public participation

General Comments

1. Civic Education is one of the major National and County Government functions as stipulated in the Constitution and the County Government Act. Civic education is not mentioned anywhere in the bill. It is our considered view that civic education precedes any bill set for public participation, hence we recommend a whole part of the bill to include civic education and budget allocation on it. This will make the people participate in meaningfully in the public participation process.
2. Outline a linkage between other Acts and this Bill such as role of Public Participation in the PFM Act
3. Alongside this Bill, other legal frameworks such as the Draft Public Participation Policy 2018 should be harmonized

The bill still lacks clear measurement variables for the following key issues: We recommend inclusion of schedule with the threshold of the following variables

No.	Variable	Measurable Threshold	Indicators	
1.	Minimum standards comprises adequate, effective and meaningful participation especially at the community level	Attendance at ward level meeting	500 people	
		Attendance at sub-county level meeting	2,000 people	
		Attendance at County level meeting	8,000 People	
2.	Inadequate framework for ensuring the effective participation and involvement of the relevant stakeholders, marginalized, vulnerable and minority groups in county governance and development	Letters of invitations to all stakeholder categories (CSOs, private sector, NGOs, women, youth, MSEs, Trade Unions, FBOs, Squatters, etc)	At least 10 invitation letters to 10 categories of stakeholders	
		Submission of memorandums	At least 10 memorandums from 10 categories of stakeholders	
3.	Inadequate safeguards of public interest in public participation processes	No. of views or memorandums submitted	At least half of the public views submitted are incorporated in the final document	
4.	Inadequate complaint handling, reporting & feedback mechanisms	Validation meetings are held	For every public hearing a validation meeting is held to ensure view are incorporated and if not included, reasons and justification is provided in writing and verbal	

Additional sections:

1. **Include a section** after the title section regarding Public participation and related rights and Duty of both National and County Governments their Responsibilities of County and Decentralized Units (CoK Articles 176 (2), 184 and 186 & 4, Schedule Part 2 (14), 187and 189, CGA Section 48, UA&C Act 2011 - Urban (city, municipality, town and market) units, Sub County, Ward, Village units)

2. **Include a schedule:** on Inter-Governmental and Inter-Agency Coordination defining the roles which include Kenya national commission of human rights, Kenya Communication Authority, Inter-Governmental Relations Technical Committee (IGTRC), NGO coordination board, Commission of Administrative Justice, (CAJ), Ministry of Interior and National Coordination etc. This will define their roles and linkages to public participation and civic education.
3. **Include a schedule on:** Notification procedures: This should be 21 day notice for all public participation hearings with all adequate information released together with the Notification
4. **Include a schedule:** on Protection for persons (whistle-blowers) who may disclose or release information in good faith that they reasonably believe, at the time of disclosure, to be true and of public interest against legal, administrative or disciplinary sanctions.

Conclusion

We hope that you will review, address, and include our concerns raised in this memo.

We also anticipate a published report of this exercise on the same.

Yours faithfully,



Dr. Margaret Lubaale
Executive Director, ED

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This memo is submitted on behalf of Registered HENNET Member Organizations

SUBMISSION ON THE PUBLIC PARTICIPATION BILL 2023(NATIONAL ASSEMBLY BILL NO.52 OF 2023).

Introduction.

The importance of public participation cannot be overstated. It is a key tool in the effective and efficient delivery of services to the citizens as it enhances transparency, accountability, and responsiveness to their needs.

The foundation of public participation is Article 10 of the Constitution, which identifies the participation of the people as one of the national values and principles of governance. As such, the participation of the people in the decisions affecting them is one of the objects of devolution identified in Article 174 of the Constitution.

Recent studies and surveys of public participation reveal that some form of public participation is taking place. However, the nature and extent of participation envisioned by the Constitution of Kenya, 2010 and the core implementing laws and regulations such as the County Governments Act, 2012, the Public Finance Management Act, 2012, and other subsidiary legislation is unsatisfactory. Simply, there is no clarity on what constitutes adequate participation, the nature of the participation that meets the constitutional threshold, or the most effective mechanisms for public participation.

In 2021, Kenya scored 31 points of 100 on the participation parameter of the Open Budget Survey which assesses budget openness at the National level. This speaks to the fact that there is need to have an effective framework on public participation. The spirit of the Constitution calls for public participation not only to take place but also to be meaningful, so that it can impact the policy-making process.

The public participation bill 2023 was read and referred to the Committee on Parliamentary Broadcasting and Library for consideration and reporting to the House on **12th October 2023**. In compliance with the Constitution of Kenya, 2010 Article 118(1) that requires the Parliament to engage the public in its sittings and businesses, the public was invited to give their inputs and recommendations on the bill.

In view of this, we call on the government to rethink some of these proposals as discussed below to inform meaningful public participation.

1. Scope of public participation under Clause 5.

We welcome the proposal aimed at ensuring that each state organ or public office shall facilitate public participation on matters relating to budgeting and financial management. Substantial evidence shows that there are gaps in legislative oversight and public participation during two stages of the budget cycle i.e. the implementation and audit stages. For example, the PFM Act, 2012 section 166(c) is not clear on how public participation should be undertaken which should be a crucial priority but only indicates that the quarterly reports shall be published and publicized.

In light of this, we call on the government to provide clarity on how public participation should be carried out not only in these two stages but also in all matters of budgeting and financial management to foster Transparency, and Accountability as entrenched in the law.

2. Determination of the responsible authority under Clause 8.

The bill proposes what body is the responsible authority including the relevant committee in each House, the Chief Justice for the Judiciary, Cabinet Secretaries for Government ministries and state corporations, county assembly committee responsible for rules and procedures and the county secretary for the county executive which is highly commendable and we welcome the proposal.

While we recognize this effort, and besides what body is the responsible authority we call on the government to provide clear guidance on who exactly is mandated to facilitate the public consultative fora. For example, the team tasked to facilitate the public consultations should be well versed with the subject matter to ensure that the information is well unpacked and that the public is enabled to contribute effectively to shape decision making.

3. Budget allocation on public participation under Clause 11 and 12.

Reportedly, inadequate resources for purposes of undertaking public participation is one of the key impediments to meaningful public participation at both the national and sub national level in Kenya. While the bill proposes that a state organ or public office shall provide the necessary resources under this Act and shall include in its annual estimates provisions for expenses for purposes of undertaking public participation, we call on the government to provide guidelines and mechanisms to ensure prioritization for adequate resourcing for purposes of undertaking public participation. Public Participation is entrenched in the law as a national value and principle of governance, and its processes should be adequately funded to achieve its objective.

4. Definition of adequate notice given to the public for them to make their input on the issue.

The schedule provides a set of general guidelines for public participation. Among them is, the state organ should give the public adequate notice to make their input on the issue. However, the term "adequate notice" is not explicit.

The bill should be very clear on the timelines i.e. how early should the calls come in, 7 days, 14 days, 21 days etc. While the time might vary depending on the subject for public participation, there should be a standard time when the public should have access to information, read and internalize the information, and effectively engage in the consultations.

5. Provision of feedback to the public.

The bill under the guidelines under the schedule, proposes that the state organ should communicate the final decisions made and the reasons for the decisions made to the public which is commendable. However, there is no timeline provided for when the public should expect feedback as well as the mechanism which will be adopted to relay feedback to the public.

An example of a best practice which could be borrowed is from Nairobi City County Public Participation Act 2015, section 10(3) b which indicates that feedback on the action taken on issues raised should be provided within thirty (30) days of the forum.

PARLIAMENTARY COMMITTEE ON BROADCASTING AND LIBRARY

INVITATION FOR PUBLIC HEARING ON PUBLIC PARTICIPATION BILL

NO.52 OF 2023. (On 8th February/2023 at county hall)

Mr Chairman and Committee;

PART I

1. Self-introduction and brief background on my interest on Public Participation (PP) bill. [PhD study]
2. Express gratitude on progress and hope that is concluded soon as it's overdue.
3. There is need for civic education on devolution in Kenya.

My Comments on the Bill:

1. Preliminary.

A) Consider to include..."Genuine" just before ...the word "process".

Reason...it improves the description. Taking into consideration the fact that there is no single definition on Public Participation. We have, Scholars, world-bank definitions and even my own...

B) Public Participation considers international conventions, treaties including AU Agenda 2063 as a right.

C) Look at Clause 6conduct of public participation. There is need to ask a Question "what is sufficient participation or consultation or meaningful etc.?"

Chairman I will refer your committee to the living case which has never been quoted in our courts on the above

REX VS SECRETARY OF STATE [1986]1ALL ER 164.

1. Sufficient notice
2. Sufficient documents on the matter/issue or affairs on for consultation
3. Sufficient time
4. Feedback on the advice given.

D) Clause 9(1) on development of public participation guidelines.

I propose that there be a time frame within which to have such in place ...six (6) months

Reason ...it has taken Parliament 14 years to come up with this Bill

Clause 10 "Gazettement within 6 months is good

PART II.

E) There is no Budget for Public Participation in the past

I propose that there be a budget at "1%" of National Level and "3 to 5%" at county levels.

PART III.

F) SCHEDULES ON PUBLIC PARTICIPATION.

1. Clause 2(1) Notice should be at least 14 days but 21 days is better.

2. Refer to what amounts to sufficient consultation. The 4 goal posts. Per the Rex case.

3...at least 3 local radios.

Include. i.e, churches, chamas, youth groups, women groups PWDs.

4. whatsapp groups registered with the county dept of pp

5. Road shows etc.

5. Circulate the summary of documents particularly on budgets in the local vernacular language in advance for citizens to participate.

6 Registered Bunge La wanainchis.

PART IV.

Clause 8. Conduct of participation... I propose that 2 to 3 minutes be adequate per person .Incase of an expert, time can be extended on per case basis.

Clause 13. Penalty. In view of the importance of the Public Participation; I Propose;-

"a minimum fine of 1 million ...Reason, the importance of Public Participationand to avoid doing Public Participation for the sake of it.

NOTE: I am aware that the Bill cannot state everything but the drafters can include important aspects of the need on the Bill being drafted.

STDY COMPARATIVE ANALYSIS;

BRAZIL.....the founder of PP.

TANZANIA

DRC RWANDA

NIGERIA

SOUTH AFRICA.

Finally we hope that Public participation (PP) will be entranced in the constitution in the fullness of time like Tanzania and other countries mentioned above.

Dr. M.J Okumu

Tel: 0722526905

Email: mj.okumu@gmail.com



21

1st November 2023

Clerk of the National Assembly

P.O. Box 41842-00100

NAIROBI.

cna@parliament.go.ke

Dear Sir,

RE: MEMORANDUM SUBMISSION: THE PUBLIC PARTICIPATION BILL, 2023

Greetings from the Centre for Intellectual Property and Information Technology Law (CIPIT) at Strathmore University. CIPIT is a think tank launched in 2012, and the scope of our work includes evidence-based research and training in intellectual property, information technology and policy, especially as they contribute to African law and human rights.

In response to your call for comments, we wish to submit our views on the Public Participation Bill, 2023. We would like to draw to your attention the following issues for your consideration:

- i) **Enhancing human rights protection:** In an effort to address emerging issues in Kenya's human rights field, our proposed change involves streamlining the requirement for public notice. It calls for the establishment of a clear and universally applicable minimum timeline for public input, with the flexibility to grant extensions based on the specific nature and urgency of individual issues. This change directly tackles the existing ambiguity surrounding the concept of "adequate time," thereby enhancing transparency, inclusivity, and accountability in democratic governance. Moreover, it seamlessly aligns with the broader context of information and communications technology (ICT), cybersecurity regulation, and data governance in Kenya. By introducing these clear and flexible timelines for public input, the proposal facilitates the integration of ICT and data governance principles into public participation processes. This integration not only reinforces cybersecurity measures to protect ICT systems and data but also ensures compliance with data governance regulations, governing the collection, handling, and safeguarding of data. Furthermore, it paves the way for the efficient integration of ICT tools and platforms for public engagement, ultimately fostering transparency, accountability, and conflict prevention within both the human rights and cybersecurity domains.
- ii) **Meaningful and inclusive public participation:** In an effort to address public participation concerns that currently exist, our proposed change involves the inclusion of principles to guide the conduct of public participation in Kenya. The principles should guide consultations with the public, communities and organizations affected by any law, policy, or decision made by each state organ and public office. In addition, the principles should be the reference point in engaging with marginalized communities in Kenya and replication by state organs and public offices. Our proposed change also involves outlining the factors to consider in determining meaningful public participation. This is also tied to the need to include a definition of public awareness. These changes will ensure that public



Strathmore University

*Centre for Intellectual Property and
Information Technology Law*

participation is done in a meaningful and inclusive way. It will also legislate against the current exercise of public awareness that is evident in the practice of public participation in Kenya.

CIPIT is founded on the research gap existing in information and communications technology. Our research projects include but are not limited to ICT aspects relating to a variety of subjects, cybersecurity regulation, and data governance. We have also partnered with other ICT organizations around the globe to facilitate our research here in Kenya.

For these reasons, we recommend that the proposal made to The Public Participation Bill, 2023 be taken into consideration. We entreat you to get in contact with us if there is any way that we can assist further.

Sincerely,
CIPIT



Strathmore University

*Centre for Intellectual Property and
Information Technology Law*

The Public Participation Bill, 2023

Centre for Intellectual Property and Information Technology Law (CIPIT), Strathmore University			
Section of the Bill	What it proposes	Proposals	Justification
Section 2	Interpretation	Include a definition of "public awareness"	Public awareness has been confused and in many instances, used interchangeably with public participation, more so, in practice. It is necessary to include this definition to show the differences and guide public participation.
Section 5	Without prejudice to the generality of section 3, each state organ or public office shall facilitate public participation on matters relating to – (a) formulation of policies; (b) budgeting and financial management; (c) law making processes; or (d) any other matter as may be prescribed in the regulations.	The scope should also cover "the implementation of functions that are far-reaching on the public communities and organisations"	Public participation should be made a prerequisite in the introduction and enforcement of government functions that have far-reaching consequences on the public, communities and organisations. For instance, in the ongoing exercise of digitalization of government services and roll-out of digital ID and functions of a similar nature that has implications for the public.
Section 6(1)	A state organ or public office shall provide	This section of the Bill has not set out factors to	Public participation takes place but is not



	reasonable and meaningful opportunities for public participation.	consider in determining “meaningful opportunities for public participation”.	always meaningful. There is a need to regulate with precision what constitutes meaningful public participation.
Schedule_ General Public Participation Guidelines Section 2 (1)- Notice	A state organ or public office shall give the public adequate notice to make their input on the issue.	This section of the schedule to the Bill should include a clearly stipulated minimum timeline or notice period that is cross-cutting among the diverse issues that require public participation. The minimum notice period could be limited to 14 or 21 days. Thereafter, each issue can have an extension of time according to its nature and urgency.	The ambiguity as to what constitutes adequate time might end up being a hindrance to the objectives of public participation. Requiring state organs and public offices to provide adequate notice for public input is crucial for democratic governance. It promotes transparency, inclusivity, and accountability while allowing diverse voices to be heard. A minimum notice period enhances trust, prevents conflicts, and ensures compliance with legal obligations. Additionally, allowing flexible timelines based on the nature and urgency of specific issues strikes a balance between thorough public input and practical governance constraints.
Schedule_ General Public	A state organ or public	This section is a	The proposed change



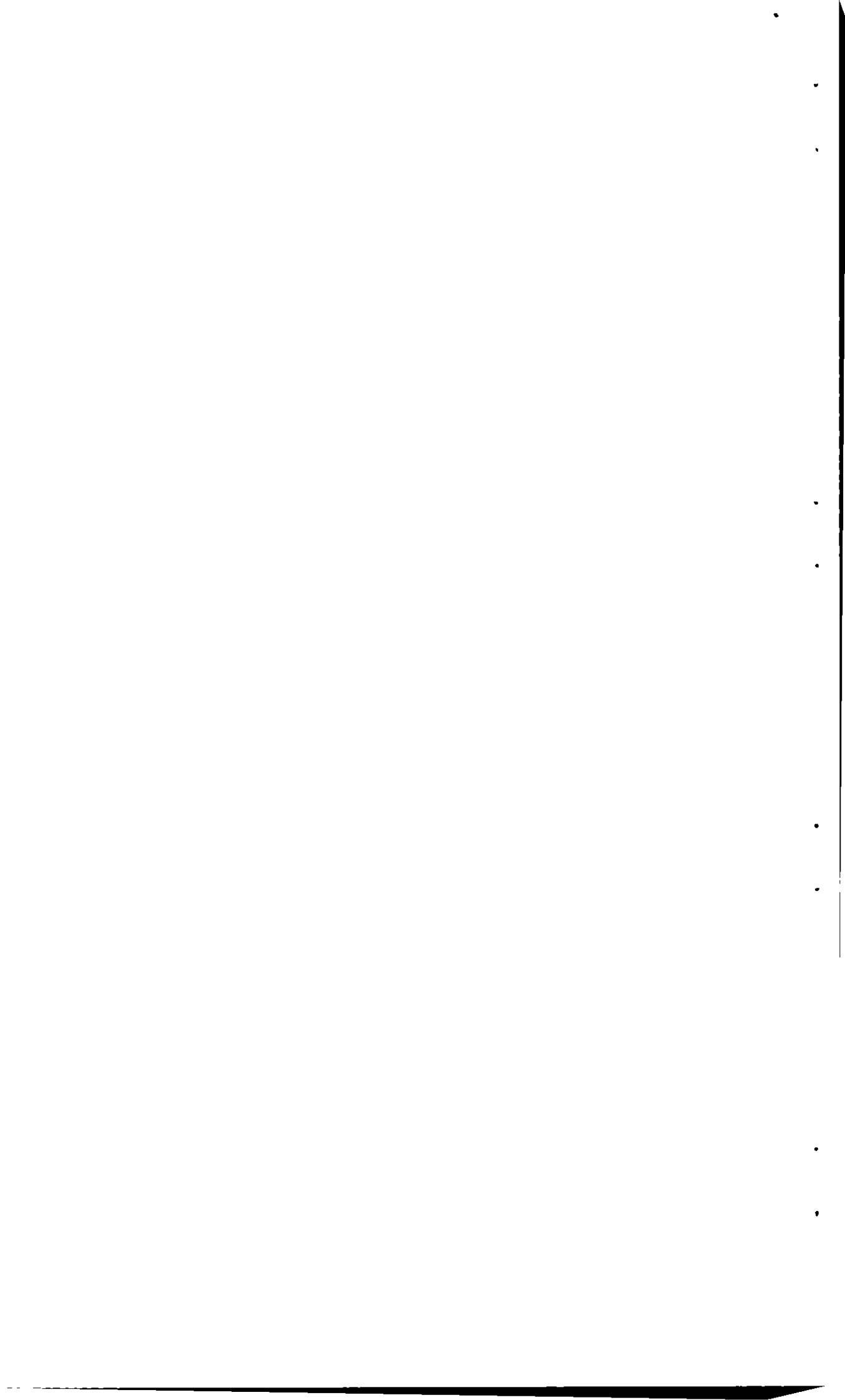
Participation Guidelines Section 4- Adequate time	office shall give the public adequate notice to make their input on the issue.	repetition of section 2(1) of the guidelines schedule. It is our proposal that this section should be deleted and section 2(1) be titled as notice and adequate time instead.	suggests eliminating a repetitive provision in the guidelines and instead incorporating it into an existing section titled "notice". This change offers several benefits, including improved clarity, elimination of redundancy, enhanced user experience, easier compliance and enforcement, streamlined document review, legal clarity, and adherence to legal drafting principles.
	Not currently provided for.	We are proposing that a section on "guiding principles" be inserted.	The Bill should set out the principles that guide the conduct of public participation in Kenya. The below non-exhaustive list could be adopted:- (i) That public views shall be taken into consideration in decision making; (ii) That all persons and institutions to be affected by a decision shall have a right to be consulted and involved in the decision making



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			process; (iii) Provision of effective mechanisms for the involvement of the public, communities and organizations that would be affected by or be interested in a decision; (iv) Participants' equitable access to the information they need to participate in a meaningful manner; (v) Promotion of sustainable decisions recognizing the needs and interests of all participants, including decision makers. (vi) Development of appropriate feedback mechanisms; (vii) Adherence to privacy and data protection principles in public participation; and (viii) Adherence to the national values under Article 10 of the Constitution;
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CSPEN MEMORANDUM ON THE PUBLIC PARTICIPATION BILL, 2023

6th November 2023

1.0 BACKGROUND AND INTRODUCTION

The Civil Society Parliamentary Engagement Network (CSPEN) is a forum for Non-state Actors, bringing together civil society organizations, professional associations, think tanks and research institutions whose programme areas involve working with the legislature. The network was established in 2019 as a joint initiative of the Westminster Foundation for Democracy and Mzalendo Trust to provide a coordinated engagement with the Kenyan legislature, its committees and members in their oversight, legislation, and representation roles. Broadly, CSPEN seeks to engage with the legislature to ensure that legislative output meets the constitutional requirements of leadership, accountability, and integrity and is reflective of and aligns with the broader public interest. Currently, CSPEN has a membership of thirty-seven national civil society organizations, and the priority areas are guided by the design and architectural framework of the parliamentary committees of the 13th Parliament ranging from, Public Finance Management (PFM) and Devolution; Inclusion and Representation; Leadership and Integrity; Human Rights and Access to Justice; Public Participation & Service Delivery; Climate Justice and Environmental democracy.

This Memorandum is informed by CSPEN Membership and also incorporates the views of Partner organizations like (Twaweza East Africa and Inuka ni Sisi Kenya), Inuka Ni Sisi!, Pawa 254; Kenya Water for Health Organization (KWAHO); Center for Economic Governance (CEG); Amnesty International Kenya; Bunge Mashinani School of Governance; Kakamega Community Centre; Resource Conflict Institute (RECONCILE); Rural Empowerment Development Organization (REDO) Kenya; Integrated Development Facility (IDF); and DPOs-Disabled Person Organizations including the Kenya Association of the United Disabled Persons of Kenya; Intellectually Handicapped (KAIH); Action Network for the Disabled (ANDY); NCPWD – National Council for Persons with Disabilities; A.S.K; Differently Talented Society of Kenya (DTSK); Women Challenged to Challenge; and Kenya National Association of Deaf-KNAD).

As a key tenet of entrenching good governance, and by dint of Article 118(1)(b) of the Constitution and Standing Order 127(3), we support the Public Participation Bill, 2023 subject to the proposed amendments herewith which we collectively submit as follows and pray that they be considered.

Signed by:

Convener, CSPEN



**Caroline Gaita
Executive Director
Mzalendo Trust
Email: caroline@mzalendo.com**

2.6 Proposed CLAUSES OF THE PUBLIC PARTICIPATION BILL, 2023

No.	Clause	Proposed Amendment	Justification
1.	Clause 2 – Definitions	Insertion of a new definition: 'Civic education' means the process of effectively imparting information and creating awareness of decision-making processes, legislations, public policy, rights of the public and responsibilities of state organs and public offices, including how these rights and responsibilities are exercised and accessed by the public, and includes classroom-based learning, informal training, experiential learning, and mass media campaigns.'	Civic education is crucial for effective public participation in decision-making within a democratic society, aligning with Article 35 of the Constitution which supports access to information. The proposals aim to make civic education mandatory for all public and state organs before decision-making, addressing the challenge of public understanding of laws and procedures, although limitations on financial and human resources exist for comprehensive civic education. This initiative involves integrating civic education into the national budget, ensuring allocated funds are properly utilized with specific measures in place.
		The definition of public participation should be deleted and inserted with the following definition: 'Public participation' means the process where individuals and governmental and non-governmental groups are engaged and influence decision-making in policy, legislation, service delivery, oversight, audit, and development matters.	This definition borrows heavily from the definition adopted in the County Public Participation Guidelines by the Ministry of Devolution and Arid and Semi-Arid Lands (ASALs) ¹ which broadens the actors and scope of public participation. Additionally, this definition introduces public participation in audit processes aligning it to ongoing practice at the Office of the Auditor General and its specific department on social audits/social accountability.

¹ January 2016. Accessed at: https://countytoolkit.devolution.go.ke/sites/default/files/resources/county-public-participation_january-2016.pdf

		Insertion of the definition of 'interested party' as: "a party who has a recognizable stake (and therefore standing) in the matter." (Black's Law Dictionary) Insertion of the definition of 'affected party' as: "a party that is likely to be impacted directly by the matters under consideration during the public participation"	This will ensure that public participation proceedings include all persons, not just a cross-section of the public.
		Amendment of the definition of Cabinet Secretary to be restricted to the Attorney General.	This definition will decrease ambiguity as there is no Minister for Justice. Additionally, it will mitigate potential conflicts of interest, as the Cabinet Secretary will be tasked with formulating specific guidelines for their own ministry.
2.	Clause 4 – Object of the Act	Insertion of Article 174 (c) and Article 184 (1)(c) of the Constitution among the Articles that the Act intends to give effect to under sub-clause 4(a). Insertion of a sub-clause highlighting the principles of the Bill	These Articles highlight public participation as an object of devolution and as a key principle in the governance of urban areas and cities.
3.	Clause 5 – Scope of Public Participation	The insertion of vetting processes of select State officers should also be included as matters that can undergo public participation.	While these processes are guided by both the Public Appointments (Parliamentary Approval) Act and the Public Appointments (County Assemblies Approval) Acts, it is crucial to emphasize that they still fall within the ambit of public participation processes.

4.	Clause 6 – Conduct of public participation	Insertion of sub-clause (3) to highlight components of meaningful public participation. Sub-clause (2) provides the criteria for reasonable public participation but there is no correspondent sub-clause as to what constitutes meaningful public participation.	Meaningful public participation has been the subject of several court petitions and contains some of the following components:² (i) clarity of the subject matter for the public to understand; (ii) structures and processes (medium of engagement) of participation that are clear and simple; (iii) opportunity for balanced influence from the public in general; (iv) commitment to the process; (v) capacity to engage on the part of the public, including that the public must first be sensitized on the subject matter. (vi) Feedback on the input given, eventual outcome and how input influenced the outcome of public participation This should be included to avoid running afoul of the spirit of Article 10 of the Constitution by turning public participation into a cosmetic venture.
5.	Clause 7 – Rights of a member of the public in public participation	Insertion of the following additional rights under sub-clause (2): i) Making presentations without influence or interruptions by a State or public officer should also be introduced. ii) Members of the public should also not face any sanctions for attending and making submissions during public participation forums.	This will seek to reduce cases where citizens feel that they are intimidated within public participation proceedings.

² British American Tobacco Kenya, PLC (formerly British American Tobacco Kenya Limited) v Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (The Affected Party) [2019] eKLR

		iii) The public should also be accorded adequate and reasonable time to make presentations. Insertion of a sub-clause highlighting the obligations of state organs and/or public officers in conducting public participation. These include the establishment of proper structures for meaningful public participation and the establishment of a monitoring and evaluation framework. Further, input by public or state officers should be limited to giving instructions and/or making clarifications on issues raised on the matter under consideration. Lastly, the amendment of sub-clause 2 (b) to include that members of the public can also make submissions through Kenyan Sign Language administered by qualified sign language professionals.	Parallel to the existence of rights, there should be corresponding obligations that necessitate codification, ensuring a clear understanding among officials regarding their roles and responsibilities. Consequently, a clause highlighting the obligations of state organs and/or public office in conducting public participation would be necessary. This is to avoid intimidation of members of the public on the submissions made. It is crucial to explicitly acknowledge that individuals can contribute using Sign Language to encourage inclusivity and uphold the rights of every individual to express themselves and participate. Omitting Sign Language from the Bill might convey an impression of disregarding or discriminating against a specific group in public engagement.
6.	Clause 8 – Determination of responsible authority	Insertion of sub-clause (8) to highlight that the stated responsible authorities hold the power to delegate the performance of the duties within the Act to an officer with that specific scope (public participation officer) or any other officer within the entity/body.	This is to ensure that citizens have a point of contact within the state organ or public office that they can follow up with and hold to account on matters concerning public participation.
7.	Clause 12 - Reports	Sub-clause (4) should be amended to include:	The objective of public participation is to collect public opinion. The annual report should therefore outline all the information collected during all public participation

		a. a summary of the number and nature of public participation sessions held, b. the immediate output and outcomes from public involvement, and c. an update on the future steps or progress of the matters under consideration. Further, a sub-clause should be introduced to note that the annual reports should be made public for access to the public through the official websites of the Parliament, relevant institutions, and any other relevant channel of communication.	sessions held and the outcomes resulting from the same. In line with Article 35 of the Constitution, the clause should also include that the annual reports on public participation made at the end of each fiscal year should be made public for access to the public to give effect to the provision.
8.	Clause 13 – General Penalty	The Bill does not outline what constitutes an offence in its entirety.	The Bill must clearly define punishable conduct which will then be followed by the penalty. In this way, both citizens and public/state officers can foresee when a specific act would be a violation and adjust their conduct accordingly.
	Proposed Additional Clause – Alignment of existing public participation legislation	The current bill does not seem to provide a position on what will happen with these existing pieces of legislation. In their introduction, the regulations should provide adequate mechanisms to align these existing laws and policies to the overarching framework provided by the bill.	A Number of public bodies have developed their own legislations and policies on public participation including several counties.
General Public Participation Guidelines			
9.	Guideline 1 – Factors to be Considered	Introduction of a new sub-clause under guideline 1 - “ Reasonable accommodations that persons with disabilities may require to participate meaningfully, including	In line with the Convention on the Rights of Persons with Disabilities, reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure persons with

		qualified sign language interpreters, physically accessible infrastructures and documents provided in braille/large print"	disabilities enjoy or exercise on an equal basis with others on all human rights and fundamental freedoms. These appropriate modifications and adjustments will allow persons with disabilities to engage meaningfully in public participation proceedings.
10.	Proposed Guideline (2)(1) - Notice	Adequate notice has not been defined clearly and may therefore be open to abuse as it is open to the discretion of either the State organ or the public office. We recommend amending the guideline and specifying a period of at least twenty-one (21) days to allow the public, affected parties and relevant stakeholders to adequately prepare and meaningfully participate. Insertion of social media platforms under (2) (a) as a place for publication and distribution of notices. The introduction of sub-clause (4) states that sub-clause (3) (b) does not prevent other interested parties from engaging in the public participation process.	The state organ facilitating public participation should be guided accordingly by the principles of administrative law in determining what 'reasonable' consists of. Additionally, this will ensure that members of the public do not feel that they have been denied the right to participate meaningfully. Twenty-one (21) days will provide interested parties sufficient time to analyze and prepare submissions for a hearing. As of January 2022, there were 11.75 million social media users in Kenya.³ Many Kenyans use these platforms avidly and receive information from the same. There has been a growing trend of government agencies leveraging these platforms to share vital information to citizens. Sub-clause (3) should not be interpreted to limit public participation to only actors identified by the state organ or public office. This will be deemed exclusionary.
11.	Proposed Guideline 4- Adequate time	Adequate notice has not been defined clearly and may therefore be open to abuse as it is open to the discretion of	The organ facilitating public participation should be guided accordingly by the principles of administrative law in determining what 'reasonable' consists of. Additionally,

³ [https://datareportal.com/reports/digital-2022-kenya#:~:text=Social%20media%20statistics%20for%20Kenya%20in%202022&text=Kepios%20analysis%20reveals%20that%20social,percent\)%20between%202021%20and%202022](https://datareportal.com/reports/digital-2022-kenya#:~:text=Social%20media%20statistics%20for%20Kenya%20in%202022&text=Kepios%20analysis%20reveals%20that%20social,percent)%20between%202021%20and%202022).

		either the State organ or the public office. We recommend a period of at least twenty-one (21) days to allow the public, affected parties and relevant stakeholders to adequately prepare and meaningfully participate.	this will ensure that members of the public do not feel that they have been restrained from participating fully. Twenty-one (21) days will provide interested parties sufficient time to analyze and prepare submissions for a hearing.
12.	Proposed Guideline 5– Access to Information for Public Participation	Insertion of social media platforms under (1) (a) as a place for publication and distribution of documents for consideration	As of January 2022, there were 11.75 million social media users in Kenya. Many Kenyans use these platforms avidly and receive information from the same and there has been a growing trend of government agencies leveraging these platforms to share important information.
13.	Proposed Guideline 5– Access to Information for Public Participation	Amendment of (1) (a) to read; Publish and distribute the documents for consideration as widely as possible using the available means, including providing hard copies, radio and television advertisements, websites, or community radio announcements <i>at least 14 days (about 2 weeks) before the deadline for submission of feedback</i>	This provides timelines for the publishing and distribution of relevant information. Receiving the information within prior and sufficient time enables the conduct of proper effective and efficient public participation.
14.	Proposed Guideline 5– Access to Information for Public Participation	Amendment of (3) (c) to read; This may be subject to <i>information disclosure limitations under the Access to Information Act</i>	This ensures that any limitations imposed by a state organ or public office are subject to the Access to Information Act. The clause as currently reads leaves room to apply subjective requirements.

15.	Proposed Guideline 5 – access to information for public participation	Amendment of 4 (b) to read; The applicant fails to satisfy any <i>access to information requirements</i> .	To ensure that a failure by a state organ or public office to give information is pursuant to Article 35 of the Constitution as well as the Access to Information Act. Imposing a confidentiality requirement is subjective and may be in contravention of the Access to Information Act
16.	Proposed Guideline 6– Processing of Responses	Add the following clause (d) transfer of applications to another public entity, if the information requested is held by that other public entity	This is in line with the provisions of section 10 of the Access to Information Act and enables ease of access to information by applicants
17.	Proposed Guideline 7– Credibility and integrity of the process	This clause is welcome as it seeks to integrate the principles of Chapter 6 of the Constitution into the public participation process. However, the clause should clearly outline who the clients are.	
18.	Proposed Guideline 9– Conduct in public participation processes	The guideline should be amended to specify what constitutes disruptive behaviour and what should happen if a public official causes it.	While the clause is welcome as it provides guidelines on the conduct to be expected during public participation sessions and processes, it is necessary to highlight what constitutes disruptive behaviour and what should happen in the event a public official is causing the disruptive behaviour.
19.	Clause 14	Schedule on General Public Participation Guidelines, sub-clause 1 (f) How do we measure the inclusivity of the process? The mechanism should give a standard procedure on how to ensure the process is inclusive to all contexts.	Public Participation should begin from the village, ward, and sub-county to the national level. The standard procedure for inclusivity shall ensure that the view captured at the village is implemented at the national level.