

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 150 (National Assembly Bills No. 52)*



REPUBLIC OF KENYA

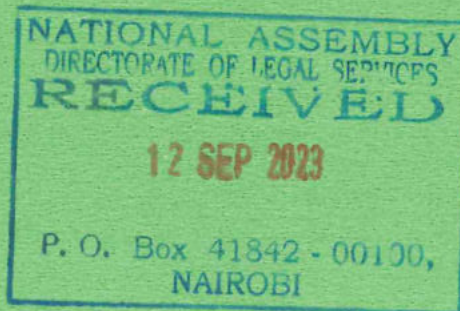
**KENYA GAZETTE SUPPLEMENT**

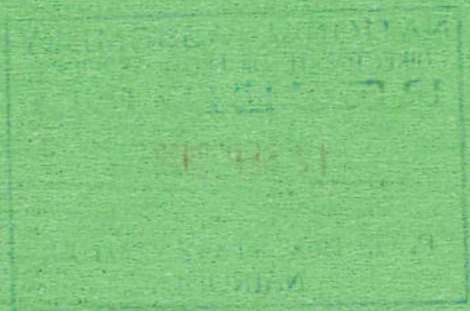
**NATIONAL ASSEMBLY BILLS, 2023**

**NAIROBI, 1st September, 2023**

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**THE PUBLIC PARTICIPATION BILL, 2023**  
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**THE PUBLIC PARTICIPATION BILL, 2023****A Bill for**

**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**

**ENACTED** by Parliament of the Republic of Kenya as follows —

**PART I—PRELIMINARY**

1. This Act may be cited as Public Participation Act, 2023. Short title.
2. In this Act, unless the context unless the context otherwise requires— Interpretation.
  - “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for justice and includes the Attorney General;
  - “general guidelines” means the general public participation guidelines provided for in the Schedule;
  - “public office” has the meaning assigned to it under Article 260 of the Constitution;
  - “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;
  - “responsible authority” means the authority responsible for public participation in the institutions set out under section 8;
  - “state organ” has the meaning assigned to it under Article 260 of the Constitution;
  - “specific guidelines” means the specific public participation guidelines developed by a responsible authority under section 8.
3. This Act shall apply to all public offices, state organs and all persons in Kenya whenever any of them— Application.

- (a) applies or interprets the Constitution or any written law; or
- (b) makes or implements any public policy decisions.

4. The object of this Act is to enhance, promote and facilitate public participation in governance processes and in particular to—

Object of the Act.

- (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;
- (b) promote democracy and participation of the people in accordance with Article 10 of the Constitution;
- (c) promote transparency and accountability in decision making; and
- (d) enhance public awareness and promote public participation in governance processes.

## PART II—PUBLIC PARTICIPATION

5. Without prejudice to the generality of section 3, each state organ or public office shall facilitate public participation on matters relating to—

Scope of public participation.

- (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.

6. (1) A state organ or public office shall provide reasonable and meaningful opportunities for public participation.

Conduct of public participation.

(2) In determining what is reasonable, the state organ or public shall take into consideration the —

- (a) nature of legislation or decision to be made;
- (b) importance of the legislation or decision on the public;
- (c) impact of the legislation or decision on the public;
- (d) need for inclusive and effective representation; and

(e) integrity and transparency of the process.

7. (1) 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.

Rights of a member of the public in public participation.

(2) A member of the public or an entity may —

(a) attend a public participation forum;

(b) 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

(c) submit a written submission to the state organ or public office conducting public participation.

(3) If in any public participation forum, it becomes necessary to keep the identity of a participant confidential, the state organ or public office shall, hold part of the proceedings in private and shall ensure that the identity of the participant is not disclosed.

8. (1) This section determines what body is the responsible authority for the purposes of this Act.

Determination of responsible authority.

(2) The relevant committee, in each House, responsible for rules and procedure shall be the responsible authority for Parliament.

(3) The Chief Justice shall be the responsible authority for the Judiciary.

(4) The secretary or chief executive officer shall be the responsible authority for an independent commission or office.

(5) Cabinet Secretaries shall be the responsible authorities for Government ministries and state corporations or any other public body under their respective ministries.

(6) The county assembly committee responsible for rules and procedure shall be the responsible authority for a county assembly.

(7) The County Secretary shall be the responsible authority for a county executive.

9. (1) Each responsible authority shall develop guidelines for undertaking public participation in the respective institution.

Development of specific public participation guidelines.

(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 may —

- (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.

(3) Until a responsible authority has developed specific guidelines relevant to the respective public body under this section, the general guidelines on public participation under this Act shall apply as though they were the specific guidelines developed by the responsible authority.

(4) The specific guidelines on public participation developed by a responsible authority shall not derogate from the general guidelines for public participation set out in this Act and the Schedule.

(5) The Statutory Instruments Act shall apply to the guidelines developed by a responsible authority under subsection (2).

No.23 of 2013.

(6) Parliament and each county assembly shall incorporate guidelines for undertaking public participation in their Standing Orders and ensure they are accessible to the public.

(7) The provisions of subsection (5) shall not apply to Parliament and the county assemblies.

**10.**(1) Each responsible authority shall publish the specific guidelines on public participation developed pursuant to section 9(1) in the *Gazette* within six months of the commencement of this Act.

Publication of specific public participation guidelines.

(2) The provisions of subsection (1) shall not apply to Parliament and the county assemblies.

### **PART III— MISCELLANEOUS PROVISIONS**

**11.** A state organ or public office shall provide the necessary resources under this Act and shall include in its

Financial provisions.

annual estimates provisions for expenses for purposes of undertaking public participation.

12. (1) Each state organ or public office shall prepare an annual report on public participation at the end of each financial year.

Reports.

(2) Where the state organ or public office relates to an 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, in 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 end of the financial year to which the report relates.

(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 period within which the complaint was addressed; and

(b) any other information that the responsible authority may consider relevant.

13. A person who contravenes a provision of 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 to both

General penalty.

#### **PART IV — PROVISIONS ON DELEGATED POWERS**

14. (1) The Cabinet Secretary may make regulations for the better carrying into effect of the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of the foregoing, the Cabinet Secretary may make regulations for—

(a) specifying additional institutions not specified under section 8; and

(b) any other matter required to be prescribed under this Act.



(3) For the purposes of Article 94 (6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section; and
- (c) the principles and standards applicable to the delegated power referred to under this Act are those found in—
  - (i) the Statutory Instruments Act, 2013; and
  - (ii) the Interpretation and General Provisions Act.

### SCHEDULE

#### GENERAL PUBLIC PARTICIPATION GUIDELINES

##### s.9(2)

1. A state organ or public office shall, before conducting public participation on a particular matter, identify the—

Factors to be considered.

- (a) purpose of the public participation;
- (b) urgency of the matter;
- (c) nature of legislation or decision to be made;
- (d) importance of the legislation or decision;
- (e) the impact of the legislation or decision on the public;
- (f) need for inclusive and effective representation;
- (g) integrity and transparency of the process;
- (h) the number and circumstances of interested parties and affected parties; and
- (i) the ability of the targeted participants to access the necessary information and the venue.

2. (1) A state organ or public office shall give the public adequate notice to make their input on the issue.

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 centres;
- (c) websites;
- (d) community radio stations;
- (e) public meetings;
- (f) newspapers; or
- (g) any other media that may be prescribed.

(3) A public participation programme under sub-paragraph (1) shall clearly identify—

- (a) specific purposes for consultation;
- (b) the community, profession or groups to be consulted;
- (c) the length of the consultations;
- (d) whether submissions should be made orally, in writing or both; and
- (e) the issues or matter for consultation.

3. (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.

Access to public participation processes.

(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.

4. A state organ or public office shall give the public adequate notice to make their input on the issue.

Adequate time.

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,

Access to information for public participation.

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 sub-paragraph (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 state organ or public office may decline to give information to an applicant where —

No.31 of 2016,  
No.24 of 2019.

- (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.

6. A state organ or public body shall ensure —

Processing of  
responses.

- (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.

7. A state organ or public body shall—
- (a) undertake and encourage actions that build trust and credibility in the public participation process among all the participants;
  - (b) be responsible for the validity of all data collected, analyses performed, or plans developed by it or under its direction; and
  - (c) not engage in conduct involving dishonesty, fraud, deceit, misrepresentation or discrimination;
  - (d) not accept any payments or gifts given contingent on an interested party's desired result where that desired result conflicts with its professional judgment;
  - (e) in undertaking public participation, avoid relationships or actions, which could be legitimately interpreted as a conflict of interest by clients, officials or the public; and
  - (f) ensure there is no misrepresentation of facts relating to the relevant body.

Credibility and integrity of the Process.

8. (1) All participants, including the representatives of the responsible authority and all respondents, shall be courteous, respectful and civil in the public participation processes.

Conduct in public participation processes

(2) Individuals who are disruptive shall be given a warning and, may, if necessary, be removed from a meeting.

(3) A person's freedom of expression under Article 33 of the Constitution shall be limited to the nature and extent specified under this section.

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of objects and reasons**

The principal object of the Bill is to provide a framework for effective public participation. The Constitution of Kenya 2010, ushered in a new system of governance that places the people at the centre of governance. Accordingly, all public processes ranging from policy making, legislative process and ultimate decision making, require the participation of the people of Kenya.

This Bill therefore proposes to provide a mechanism to facilitate effective and coordinated public participation. The Bill accordingly gives effect to the Constitutional principles of public participation and participatory democracy enunciated in Articles 1, 10, 35, 69, 118, 174, 184, 196, 201, and 232 of the Constitution.

The Bill designates the responsible authorities for purposes of developing institution specific guidelines for public participation. Public participation processes are different in all institutions and therefore, the Bill recognizes these differences and designates responsible authorities for purposes of developing the specific guidelines and offering oversight for public participation.

The Bill also requires the responsible authorities to develop the specific guidelines within a stipulated timeline. It provides for the development of the guidelines which must be in line with the general guidelines provided in the schedule to the Bill. The Bill also proposes that each responsible authority must provide for resources and budget for expenditure pertaining public participation in the annual estimates. Further, for accountability, every responsible authority is required to include in its annual report an outline of activities and outcomes of public participation.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill delegates legislative powers to the Cabinet Secretary to make regulations for the better carrying into effect of the provisions of the Bill. The Bill does not limit any of the rights and fundamental freedoms contained in the Bill of Rights in the Constitution.

### **Statement on how the Bill concerns county governments**

The Bill seeks to provide a national framework for public participation. Public participation is a Constitutional requirement at all levels of government. The Bill therefore concerns county governments in terms of Articles 110(1) (a) of the Constitution in that it contains

provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

**Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 15th August, 2023.

DANIEL EPUYO NANOK,  
*Chair, Committee on  
Parliamentary Broadcasting and Library.*



