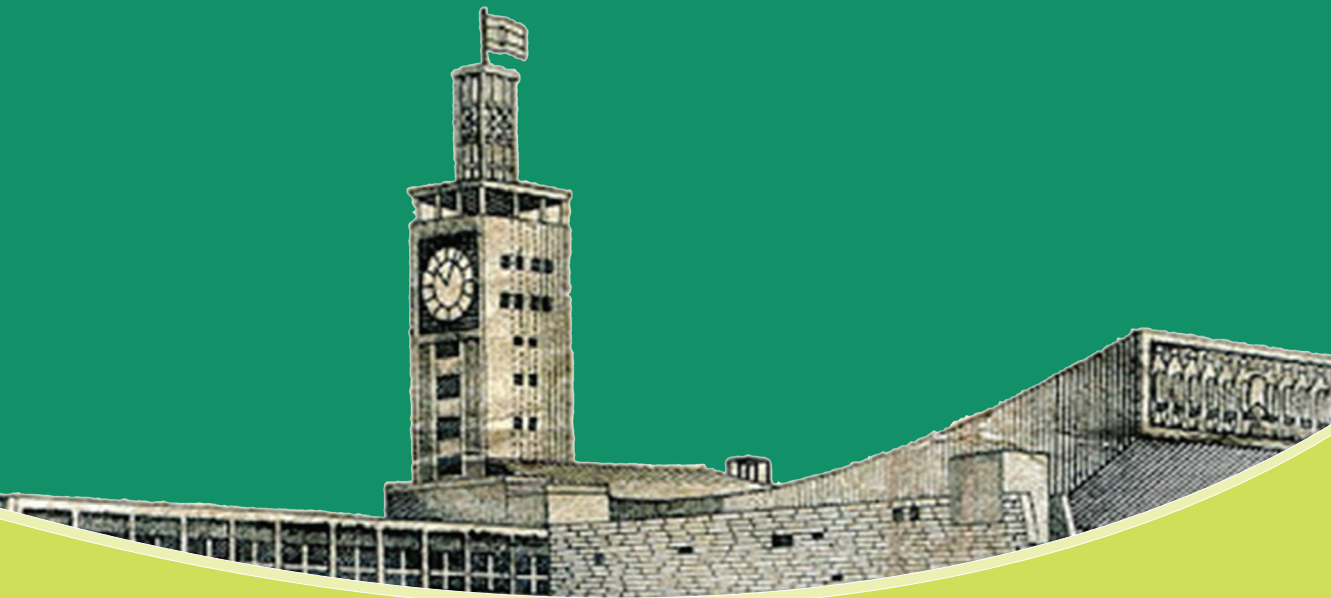




Parliament of Kenya

The National Assembly

Public Participation in the Legislative Process



Fact Sheet
No. 27

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This Factsheet on **Public Participation in the Legislative Process** is part of the Kenya National Assembly Factsheets Series that are supposed to enhance public understanding, awareness and knowledge of the work of the Assembly and its operations. It is intended to serve as easy guide for ready reference by Members of Parliament, staff and the general public. The information contained here is not exhaustive and readers are advised to refer to the original sources for further information.

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FactSheet

27

Public Participation in the Legislative Process

Introduction

Public participation is defined by the International Association for Public Participation as the involvement of those affected by a decision in the decision-making process. Public participation encompasses a range of public involvement, from simply informing people about what Parliament is doing to delegating decisions to the public.¹

Public participation is one of the **foundational principles of democracy**. Democracy is premised on the idea that all citizens are equally entitled to have a say in decisions affecting their lives. Citizens' participation in government decision making is fundamental to the functioning of a democratic system of governance as stated in Chapter One of the Constitution of Kenya, 2010.

Public participation in the legislative activities of Parliament is a fundamental constitutional principle. This fact sheet is aimed at assisting in the preparation and understanding of public participation in the legislative process and in particular in the National Assembly. It sets out what public participation is within the provisions of Articles 10, 118, 124, 201, 221, and 232 of the Constitution of Kenya, 2010 and the National Assembly Standing Orders.

Public participation has many benefits some of which are: citizen empowerment; the generation of new, diverse and innovative ideas and actions; enhancement of citizen government relations; legitimization of government programs, appropriate prioritization



(Above): Hon Francis Mwangangi, a member of departmental committee on Lands facilitating a public hearing in Machakos County.



(Right): The Public presenting views in a public hearing

of projects; improved delivery of public services and; governments responsiveness.²

The factsheet is a standard guide to support public engagements and decision making in policy, legislation, planning, budgeting and service delivery.

The importance of public participation is captured in Article 118 of the Constitution which mandates Parliament to facilitate public participation. The citizen involvement in policy-making and implementation strengthens and deepens good governance, promotes transparency and fosters accountability.

I. Introduction to Public Participation

(a) Public participation defined

Public participation can be defined as the process of interaction between an organization and the public with an aim of making an acceptable and better decision. The process involves informing, listening, dialogue, debate and analysis as well as implementation of agreed solutions.

(b) Participants of public participation

Participation in the legislative process is open to all members of the public, individually or as legally recognized organised groups. The Constitution of Kenya, 2010 provides that Parliament shall not bar anyone from participating on any grounds such as age, race, colour, gender or political affiliation.

II. Framework for Rights, duties and responsibilities of the public in public participation

a) **Sovereign power** which belongs to the people can be exercised either directly through citizen participation or indirectly through democratically elected leaders.³

b) **National values and principles of governance** include *public participation* as underscored in Article 10 of the Constitution.

² Institute of Economic Affairs, Review of Status of Public Participation, and County Information Dissemination Frameworks, 2015

³ Government of Kenya, The Constitution of Kenya, 2012, Article 1

- c) **Public access and participation in both the national and county legislature** is guaranteed specifically under Article 118(1) (b) and 196(1) (b) of the Constitution and it directs the national and county legislatures to respectively “*facilitate public participation*” in their work. This underscores the fact that the election of representatives does not negate the need for people to continuously be involved in governance processes.
To this extent, members of the public are invited to submit written memoranda on proposed legislation. Additionally, Parliament proceedings are open to the public through live streaming.
- d) **Right to petition Parliament** underscored in Article 119 of the Constitution provides the public with the right to request Parliament to consider any matter within its authority.
- e) **The principles of equality** as espoused in Article 27 guarantees equal participation in decision making processes including the legislative activities of Parliament.
- f) **Freedom of expression** guaranteed in Article 33 of the Constitution includes the freedom to seek, receive or impart information or ideas including during the public participation processes.
- g) **Right to access information** as provided in Article 35 of the Constitution guarantees every citizen the right to access information held by the State. This includes information required for effective public participation within the limits of Access to Information Act 2016.

III.Areas of public participation in the National Assembly

(a) Public Participation in Law Making

Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in legislative and other business of the Parliament and its committees. It further provides that Parliament conducts its business in an open manner, and hold its sittings and those of its committees in public.

When a Bill has been introduced in the House and upon referral to the relevant committee, the committee places advertisements in the media requesting for public views on the Bill. The relevant committee facilitates public participation on the Bill through appropriate mechanisms which include:

- (i) inviting submission of memoranda;
- (ii) holding public hearings;
- (iii) consulting relevant stakeholders; and
- (iv) consulting experts on technical subjects.

The Committee takes into consideration the views and recommendations of the public while considering the Bill and while preparing its report to the House.

(b) Public participation in budget making process

The public finance framework under Articles 201, 221, and 232 requires that public participation be integrated in the budget process. This is best expounded in the Public Finance Management Act, 2012 and the National Assembly Standing Orders.

The members of the public can therefore:

- Make submissions on the budget; or
- Attend public hearings on the budget and the Finance Bill.

(c) Public participation in oversight

The National Assembly oversees National Government Executive by holding it to account, approving appointments, processing removal from office of State officers, reviewing statutory instruments, among other actions.

The public can participate in the aforementioned activities by expressing their views on legislation, suitability or otherwise of public officers and provide grounds for their removal by petitioning Parliament.

IV. Tools for public participation

The public can engage the legislature and give their views orally or in writing through:-

1. Petitions – This is provided under Article 119 of the Constitution. The public can petition Parliament on any matter under its authority including enacting, amending or repealing legislation, or removal of public officers from office under Article 251.
2. Submissions or memoranda – When the National Assembly is considering Bills, statutory instruments, budget estimates or conducting an inquiry, the general public may make submissions on the subject matter. When conducting approval hearings or processing removal from office of State officers, the public is invited to present memoranda on the suitability or otherwise of the concerned public officer.
3. Public forums – These provide an opportunity of face-to-face engagement between Members of Parliament and citizens through which instant feedback and observation of state of affairs can be received. Committees can undertake public hearings through meetings in and outside Parliament and inspection visits of projects. Members of the public are free to attend committee meetings except when the committee is deliberating on a report.

V. Organizing public participation

(a) Steps in organizing public participation:

1. Creating awareness – placing advertisements in mainstream media, both print and visual. This helps in generating awareness and increases citizen interest to participate and give views.
2. Involvement – identification of the key stakeholders or interested groups including those directly affected and those that can offer solutions.
3. Contacting the public – communication to the stakeholders in writing and inviting them for meetings and requesting submission of documents or memoranda.
4. Meetings – holding meetings to get views including field visits, where necessary.

(b) Public Participation Session

When conducting the actual public participation sessions, officers should ensure that the action plan is properly carried out for accountability reasons. The proposed activities should be planned so as to ensure that possible conflict

is mediated and misunderstandings addressed. The stakeholders should be provided with the necessary information so as to enhance credibility. Witnesses are invited in time and allowed sufficient time to prepare their oral or written submissions.

(c) In camera sessions

In camera sessions can only be held within the confines of Article 118 (2). The relevant Speaker or chairperson of a committee should be satisfied that there are sufficient grounds to exclude the public in any committee activity. The person requesting for in camera sessions should indicate the reasons for such a request.

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