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THE PUBLIC PARTICIPATION BILL, 2019

A Bill for

AN ACT of Parliament to provide 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 the Parliament of Kenya as follows—

1. This Act may be cited as the Public Participation Act, 2019.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“civic education” means any steps taken and programmes implemented to equip the public with knowledge on a particular policy, legislation, project, subject, topic or matter;

“general guidelines” means the general public participation guidelines provided for in the Schedule;

“public” means the citizens of Kenya and any professional, civic, non-governmental, private or public body;

“public participation” means any process that directly engages the public in decision making and gives consideration to public input in making that decision

“responsible authority” means the persons responsible for public participation in the institutions set out under section 5.

3. This Act shall apply to all public offices and state organs in Kenya.

Application

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;
- (d) enhance public awareness and understanding of governance processes;
- (e) promote community ownership of public decisions; and
- (f) promote public participation and collaboration in governance processes.

5. The conduct of public participation shall be guided by the principles that—

Guiding principles.

- (a) the public, communities and organisations to be affected by a decision shall have a right to be involved in the decision making process;
- (b) there shall be provision of effective mechanisms for the involvement of the public, communities and organizations that would be affected by or be interested in a decision;
- (c) there shall be enhanced participation through civic education for purposes of creating an enlightened and empowered citizenry
- (d) ensures inclusivity of the public generally and not limiting involvement to sector stakeholders;
- (e) ensures equitable access to and timely provision of the information that participants need in order to participate in a meaningful manner;
- (f) clear and reasonable timelines shall be established at every stage of decision making and that the public shall be informed of the timelines;
- (g) public views shall be taken into consideration in decision making;
- (h) ensures development of appropriate feedback mechanisms;
- (i) facilitates allocation of adequate financial resources for purposes of undertaking public participation;
- (j) ensures adherence to the national values under Article 10 of the Constitution;

- (k) ensures adherence to the principles of leadership and integrity set out in Chapter Six of the Constitution;
- (l) ensures adherence to the principles of public participation that may be prescribed by any written law;
- (m) that there shall be a monitoring and evaluation framework for public participation processes undertaken; and
- (n) ensures promotion of sustainable decisions recognising the needs and interests of all participants, including decision makers.

6. (1) A member of the public has the right to —

- (a) attend public participation fora;
- (b) make presentations either orally or by way of written submission to a state organ or public office;
- (c) be accorded adequate time to make a presentation; and
- (d) make presentations without interruption or influence by a state or public officer.

Rights of a member of the public in public participation.

(2) Any input by a state or public officer shall be limited to giving instructions and making clarification on issues raised in the matter under consideration.

(3) A person shall not—

- (a) face any sanctions for attending and making submissions during public participation;
- (b) in a public participation forum, submit allegations of wrong-doing against another person unless accompanied by a sworn statement by the person making the allegation

(5) The sworn statement under subsection (3) shall be made available to the relevant public or state officer at least thirty minutes before the submission containing such allegations is made.

7. (1) The entities specified under subsection (2) shall, in the carrying out of its mandate under this Act,

Determination of responsible authority.

develop guidelines for the conduct of public participation.

(2) For the purposes of this Act, the responsible authority for purposes of developing guidelines for public participation shall be, in the case of—

- (a) Parliament, the relevant committee, in each House, responsible rules and procedure;
- (b) the Judiciary, the Chief Justice;
- (c) independent commissions or offices, boards, authorities or any other public body, the respective secretaries or chief executive officers of the public body;
- (d) Government ministries, the Cabinet Secretaries for the Government Departments responsible for public participation;
- (e) County Assemblies, the county assembly committees responsible for public participation; and
- (f) county executives, the County Secretaries.

(2) The authority responsible for public participation in a public institution not specified in this Act, shall be the body prescribed by regulations as the responsible authority.

8. (1) The chief executive officer or accounting officer of a responsible authority shall be the public participation officer of that entity for the purposes of this Act.

Designation of public participation officers.

(2) The chief executive officer or accounting officer of a responsible authority may delegate the performance of the duties as the public participation officer to any other officer of that entity.

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.

10. Each responsible authority shall publish the specific guidelines on public participation developed pursuant to section 6(1) in the *Gazette* within three months of the commencement of this Act.

Publication of specific public participation guidelines.

11. Every responsible authority shall, include in its annual estimates, provisions for expenses for purposes of undertaking public participation.

Financial provisions

12. (1) The responsible authority shall prepare an annual report on public participation at the end of each financial year.

Reports.

(2) Where the responsible authority 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 year to which the report relates.

(4) The annual report shall contain—

- (a) a description of the activities and outcomes of public participation;
- (b) 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
- (c) any other information that the responsible authority may consider relevant.

(5) The responsible authority shall cause the annual report to be published and publicized in such other manner as the responsible authority may determine.

13. The Attorney General may make regulations for the better carrying into effect of the provisions of this Act. Regulations.

SCHEDULE**s. 9(2)****GENERAL PUBLIC PARTICIPATION GUIDELINES**

1. (1) The responsible authority shall provide reasonable and meaningful opportunities for public participation.

Opportunities for public participation.

(2) In determining what is reasonable, the authority shall take into consideration the-

- (a) nature of legislation or decision to be made;
- (b) importance of the legislation or decision; and
- (c) the intensity of the impact of the legislation or decision on the public.

2. The responsible authority shall facilitate continuing civic education on public engagement activities and techniques.

Public awareness.

3. The responsible authority shall, before conducting public participation on a particular matter, identify—

Factors to be considered.

- (a) the purpose of the public participation;
- (b) urgency of the matter; and
- (c) the number and circumstances of interested parties and affected parties;
- (d) the ability of the targeted participants to access the necessary information and the venue.

4. (1) The relevant institution shall give the public adequate notice to make their input on the issue.

Notice.

(2) For purposes of paragraph (1), the responsible authority shall establish mechanism 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;
- (g) any other media that may be prescribed.

5. (1) The responsible authority shall ensure that stakeholders 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) The responsible authority 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 responsible authority shall provide an interpreter for those participants who wish to make their remarks in their local language.

6. (1) Before undertaking public participation, the responsible authority shall develop a public participation programme.

Consultation framework.

(2) A public participation programme under subsection (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.

7. The responsible authority shall establish and ensure maintenance of an online platform to enable access, of information relating to the institution and any other notices to the public.

Electronic platform.

8. Every public participation forum shall be undertaken within a realistic timeframe for consultation, allowing reasonable period for each stage of the process.

Timeframe for participation.

9. The responsible authority shall ensure that the consultation document is as simple and concise as possible, providing the summary of the issues or matter for consultation and clearly setting out the questions to be addressed.

Consultation documents.

10. (1) The responsible authority shall—

(a) publish and distribute the documents for consideration as widely as possible, including but not limited to providing hard copies, television, advertisements,

Access to information for public participation.

websites, community radio announcements or traditional media; 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 subsection (2)—

- (a) shall be addressed to the head of the responsible authority or such other person as the authority 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 authority.

(4) Subject to the provisions of Article 35 of the Constitution and the law relating to freedom of information and data protection, the responsible authority 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 responsible authority.

(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.

11. The responsible authority shall ensure —

Processing of responses.

- (a) that all responses are carefully and independently analysed;
- (b) the final decision is made widely 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.

12. The responsible authority shall—

Credibility and integrity of the

- (a) undertake and encourage actions that build trust and credibility in the public participation process among all the participants; Process.
- (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.

13. (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

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 provides for preliminary matters including the short title, objects of the Act and the guiding principles that guide public participation. The Bill also designates the responsible authorities for purposes of developing institution specific guidelines for public participation and also designates responsible public participation officers. 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 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 rights and fundamental freedoms

The Bill delegates legislative powers to the Attorney General 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 that 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 19th September, 2019.

JOASH NYAMOKO,
Chairperson, Parliamentary Broadcasting and Library.

