

Approved for tabling. *But* SNA

11/3/2020.

REPUBLIC OF KENYA




THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT - FOURTH SESSION

THE COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY

REPORT ON THE CONSIDERATION OF THE PUBLIC PARTICIPATION BILL,  
2019

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	12 MAR 2020 THURSDAY
TABLED BY:	HON. JOASH NYAMOKO CHAIRPERSON - PBE L.
CLERK AT THE TABLE:	

DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI-KENYA

MARCH, 2020

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## **LIST OF ABBREVIATIONS AND ACRONYMS**

M.P - Member of Parliament

### **LIST OF ANNEXURES**

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## **THE CHAIRPERSON'S FOREWORD**

The report contains the Committee's proceedings on the consideration of the Public participation Bill, 2019, National Assembly Bill 69 which was read a first time on Tuesday 29<sup>th</sup> October, 2019.

The Public Participation Bill, 2019 National Assembly Bill 69 is a Bill for an Act of Parliament sponsored by Committee on Parliamentary Broadcasting and Library. The bill went through the First Reading on 29<sup>th</sup> October, 2019 and was referred to the Committee for consideration and reporting to the House pursuant to the National Assembly Standing Order 127(1).

The Committee placed an advertisement in the local dailies on Monday, 11<sup>th</sup> November, 2019 to get the public views and all other stakeholders. The Committee through the Clerk of the National Assembly also wrote to key stakeholders inviting them to submit their views on the Bill on or before 18<sup>th</sup> November, 2019.

Upon receipt of the memoranda, the Committee held a total of ten meetings with the stakeholders and considered submissions received. A total of five memoranda were received from members of the public and institutional stakeholders. The submissions are incorporated in this report.

The Committee also held public meetings with stakeholders in towns in Mwingi, Mombasa, Kilifi, Garissa, Busia, Kakamega, Narok, Nyamira, Isiolo and Samburu Counties.

Thereafter, the Committee proceeded for a report writing retreat which provided the Committee an opportunity to consider the submissions of the public and stakeholders and to further draft, consider and approve its Report.

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 consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

On behalf of the select Committee on Parliamentary Broadcasting and Library and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honor to present to this House the Report of the Committee on its consideration of the Public Participation Bill, 2019.

**Hon Joash Nyamoko Nyamache, HSC, MP**

## EXECUTIVE SUMMARY

The Public Participation Bill, 2019 National Assembly Bill 69 was read a first time on 29<sup>th</sup> October, 2019 and subsequently referred to the select Committee on Parliamentary Broadcasting and Library for consideration and thereafter report to the House pursuant to Standing Order No.127(1).

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.

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.

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.

## ESTABLISHMENT AND MANDATE OF THE COMMITTEE

1. The Committee on Parliamentary Broadcasting and Library was constituted on 7<sup>th</sup> December, 2017, during the first session of the twelfth Parliament pursuant to Standing Order 212D.
2. The Select Committee is mandated, under S.O. 212 D (3) to inter-alia:-

Consider and report on all matters relating to broadcasting of the proceedings of the House;

- *Advise the House on matters related to public participation;*
- *Make reports and recommendations to the House, including proposed legislation on matters relating to broadcasting of House proceedings;*
- *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*
- *Assist Members in utilizing the facilities provided by the library and research services, including use of information and communication technology.*



## 1.2 COMMITTEE MEMBERSHIP

The Committee comprises of the following Members -

NO	MEMBERS NAME	POSITION	CONSTITUENCY	POLITICAL PARTY
1	Hon. Nyamoko, Joash Nyamache, HSC, MP	Chairperson	North Mugirango	Jubilee Party
2	Hon. Liza, Chelule, Chepkorir, MP	Vice Chairperson	Nakuru County	Jubilee Party
3	Hon. Daniel Epuyo Nanok, MP	Member	Turkana West	Jubilee Party
4	Hon. James Mwangi Gakuya, M.P	Member	Embakasi North	Jubilee Party
5	Hon. Hassan, ZuleikhaJuma, MP	Member	Kwale County	Orange Democratic Party
6	Hon. Dr. Irene Kasalu Muthoni, MP	Member	Kitui County	Wiper Democratic Party-Kenya
7	Hon. Dr. Ochieng, Pamela Awuor, MP	Member	Mogori County	Orange Democratic Party
8	Hon. Dr. Lilian Gogo, Achieng, MP	Member	Rangwe	Orange Democratic Party
9	Hon. Anab Gure Mohamed, MP	Member	Garissa County	Jubilee Party
10	Hon. Eric Njiru, Muchangi, MP	Member	Ruyenjes	Jubilee Party
11	Hon. Gertrude Mbeyu Mwanyanje, MP	Member	Kilifi County	Orange Democratic Party
12	Hon. James Gichuhi Mwangi, MP	Member	Tetu	Jubilee Party
13	Hon. Justus Murunga Makokha, MP	Member	Matungu	Amani National Congress
14	Hon. Kipkosgei, Tonui Joseph, MP	Member	Kuresoi South	Jubilee Party

<b>15</b>	Hon. Lekumontare, LentoiJoni Jackson, MP	<b>Member</b>	<b>Samburu East</b>	<b>Kenya African National Union</b>
<b>16</b>	Hon. Mercy Wanjiku Gakuya, MP	<b>Member</b>	<b>Kasarani</b>	<b>Jubilee Party</b>
<b>17</b>	Hon. Mwangi, Jonah Mburu, MP	<b>Member</b>	<b>Lari</b>	<b>Jubilee Party</b>
<b>18</b>	Hon. Mwaniki Wangari, MP	<b>Member</b>	<b>Kigumo</b>	<b>Jubilee Party</b>
<b>19</b>	Hon. Patrick Munene Ntwiga, MP	<b>Member</b>	<b>Chukaigambang'o mbe</b>	<b>Jubilee Party</b>
<b>20</b>	Hon. Paul Nzengu, Musyimi, MP	<b>Member</b>	<b>Mwingi North</b>	<b>Wiper Democratic Party-Kenya</b>
<b>21</b>	Hon. Richard Ken Chonga, MP	<b>Member</b>	<b>Kilifi South</b>	<b>Orange Democratic Party</b>
<b>22</b>	Hon. Said Buya Hiribae, MP.	<b>Member</b>	<b>Galole</b>	<b>Forum for Restoration of Democracy Kenya</b>
<b>23</b>	Hon. Charles Kamuren, MP	<b>Member</b>	<b>Baringo South</b>	<b>Jubilee Party</b>

### **COMMITTEE SECRETARIAT**

The Committee is resourced with the following technical staff, representing the Office of the Clerk;

- (1) Mr. Johnson Kioko Clerk Assistant I (Lead Clerk)
- (2) Mr. Hassan Abdullahi Arale - Clerk Assistant II
- (3) Ms. Marlene Ayiro Senior Legal Counsel
- (4) Ms. Lorna Okatch Research Officer
- (5) Mr. Wilson Angatangoria- Serjeant at Arms

## 2.0 INTRODUCTION

3. The Public Participation Bill, 2019 was sponsored by the Committee on Parliamentary Broadcasting and Library. The bill was read a first time on 29<sup>th</sup> October, 2019 and subsequently referred to the Committee on Parliamentary Broadcasting and Library for consideration and reporting to the House.
4. Public participation is having an open, accountable and structured process where citizens or people or a segment of a community can interact, exchange views and influence decision making. Actually, public participation is part of a democratic process.
5. Public participation is now a guaranteed process in Kenya. The Constitution of Kenya 2010 in various articles requires that public participation be undertaken at all levels of government before government officials and bodies make official decisions.
6. However, it is important to point out that public participation is essentially a new process in Kenya today. It is a complex and not so well understood concept and process. The process is often unstructured and undertaken in a 'tokenism' way. On the other hand, there is little capacity building on the citizens to enable them engage in the process from an informed, structured and meaningful way.
7. Public participation offers citizens the inherent involvement, through the act of participation or the instrumental benefits resulting from the opportunity to contribute to public policy.

### 3.0 CONSTITUTIONAL FRAMEWORK ON PUBLIC PARTICIPATION

8. The Public Participation Bill, 2019 seeks to provide a general framework for effective public participation to give effect to the constitutional principles of democracy and participation of the people under several articles of the Constitution.
9. **The following Constitutional provisions provide for public participation -**
  - i *Article 1(2)*- the people may exercise their sovereign power either directly or through their democratically elected representatives;
  - ii. *Article 10 (2)*- The National values and principles of governance include- patriotism, national unity, sharing and devolution of power, the rule of law, democracy and **public participation**;
  - iii. *Article 35*- Access to information;
  - iv. *Article 69 (1)(d)* – encourage public participation in the management, protection and conservation of the environment.
  - v. *Article 118*- public access and participation;
  - vi. *Article 174 (c)* objects of devolution- to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
  - vii. *184 (1) (c)* –provide for participation by residents in the governance of urban areas and cities;
  - viii. *196 (1) (b)*- public participation and county assembly powers, privileges and immunities
  - ix. *Article 201(a)* there shall be openness and accountability, including public participation in financial matters;
  - x. *Article 232(1) (d)* - involvement of people in process of policy making.
10. There is currently no national law that covers the aspect of public participation but several Counties have formulated their respective county legislations on public participation.
11. The Bill contains ten (10) clauses, and 1 schedule.
12. The Bill seeks to provide a general framework on operationalization of public participation in the Country.



#### 4.0 OVERVIEW OF THE BILL

##### CLAUSE BY CLAUSE ANALYSIS OF THE BILL

**13. The long title of the Bill provides that it is 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 231 (1) (d) of the Constitution and for connected purposes.

**14. Clause 1-** provides for the short title of the Bill to be known as the Public Participation Act.

**15. Clause 2** of the Bill is on the interpretation of some of the key terms used in the Bill.

**16. Clause 3** of the Bill provides that the Act shall be applied by all public offices and state organs in Kenya.

**17. Clause 4** - enhance, promote and facilitate public participation in governance.

**18. Clause 5** of the Bill provides for guiding principles when effecting public participation which principles include—

- i. the public, communities, organizations to be affected by a decision shall have a right to be consulted and involved in the decision making process *e.g. when processing technical bills, the National Assembly endeavors to ensure that it get the experts in that area to tender their submissions;*
- ii. provision of *effective mechanisms* for the involvement of the public, communities and organization to be affected by decisions;
- iii. enhanced participation through civic education to the citizenry;
- iv. inclusivity of the public generally with little or no limitations;
- v. equitable access to and timely provision of the information that participants need in order to participate in meaningful manner;
- vi. Establishment of clear and timeliness at every stage of decision making *how much time is sufficient for public participation on bills?*
- vii. public view should be taken into consideration in decision making;
- viii. development of appropriate feedback mechanisms;
- ix. allocation for resources for PP;
- x. adherence to national values under *article 10 of the Constitution;*
- xi. adherence to the principles of leadership and integrity in chapter six of the Constitution;
- xii. adherence to the principles of Public Participation prescribed in any written law;
- xiii. that there shall be a monitoring and evaluation framework for public participation processes undertaken; and
- xiv. promotion of sustainable decisions, with input of the public

19. **Clause 6 of the Bill** provides for a member of the *public* in public participation which include the right to —
- i. attend public participation;
  - ii. make oral/written submissions to a state organ or public office;
  - iii. be accorded adequate time to make their presentation;
  - iv. Make presentation without interruption or influence by a state/public officer.
  - v. Member of the public shall not face any sanctions for attending and making submissions during public participation.
  - vi. Allegations against another must be accompanied by a sworn statement of the one making allegations, which statement must be submitted 30 minutes before making the allegations
20. **Clause 7** of the Bill provides determination of the responsible authority to effect Public Participation as follows—
- i. Parliament, the relevant committees in charge of rules and procedure
  - ii. The Judiciary- the Chief Justice;
  - iii. Independent commissions or offices, board, authorities – respective secretaries or CEO's of public bodies
  - iv. County Assemblies- committees responsible for Public Participation;
  - v. County executives- County Secretaries
21. **Clauses 8** of the Bill provides for designation of a public participation officer in place of the determined officer in clause (8) above.
22. **Clause 9** of the Bill provides for development of specific public participation guidelines.
23. **Clause 10** of the Bill provides for the publication of sector specific guidelines within three months upon the enactment and commencement of this Act.
24. **Clause 11** of the Bill provide for Reports. The responsible authority is required to prepare annual report on Public Participation at the end of each financial year.
25. **Clause 12** of the Bill provides for regulations of this Act which shall be formulated by the AG.
26. **The Schedule** to this Bill provides the General Public Participation Guidelines to include—
- i. Opportunities for public participation- experts, affected persons and entities;
  - ii. Public awareness- continuous education on public engagement activities;
  - iii. Factors to be considered-

- iv. Notice- the public should be given adequate notice to make their input on the issue and ensure widest reach to the citizens
- v. Access to public participation processes
- vi. Consultation framework
- vii. Electronic platform
- viii. Timeframe for participation
- ix. Consultation document
- x. Access to information for public participation
- xi. Processing of responses
- xii. Credibility and integrity of the process
- xiii. Conduct in public participation processes



## 5.0 PUBLIC PARTICIPATION: CONSIDERATION OF SUBMISSIONS

27. Pursuant to *Article 118(1) (b)* of the Constitution and Standing Order No. 127(3) which provides that the Parliament shall facilitate public participation, the Committee placed an advert in the local dailies on 11<sup>th</sup> November, 2019 and wrote to key stakeholders inviting them to submit their views to the Committee through the Clerk of the National Assembly on or before 25<sup>th</sup> November, 2019.
28. By the deadline for submission, the Committee had received five (5) memoranda from among others Kenya law reform Commission, institute for social disability, Natural Justice, Sauti ya wanjiku organization and Council of Governors.

### 5.1 Committee Meetings

29. The Committee held a total of 15 sittings, during which oral and written submissions from the public in Kitui, Garissa, Isiolo, Samburu, Narok, Nyamira, Busia and Kakamega, Mombasa and Kilifi Counties were received during public hearing sessions.

### 5.2 Submissions from the public

30. In considering the Public participation Bill, 2019, the Committee took into account the memoranda and oral submissions received from the public and its deliberations. The following constitutes the views of the Committee on the issues arising with regard to each Clause of the Bill—

#### 5.2.1 Kenya Law Reform Commission

31. **Under clause 2 on interpretation**-on Civic Education and public participation

The Kenya Law Reform Commission submitted that the definitions are restrictive and should be harmonized with existing acceptable definitions. The committee agreed with this proposal to amend the definition of civic education.

32. **Under clause 9 on Development of specific public participation guidelines** The Kenya Law Reform Commission submitted that there may be need to cross reference with clause 5 on guiding principles while developing the specific public participation guidelines. The Committee agreed with the proposed amendment to cross reference the two sections.

33. **Schedule and entire Bill on General Public Participation Guidelines** the Kenya Law Reform Commission submitted that, decisions are referred by the constitution in Article 10 related to public policy decisions and not any other decisions. Decisions as provided in the bill may be subject to misinterpretation and therefore recommended that, Decisions should be drafted to mean public policy decisions. Public policy

definition should be provided in the interpretation section. This definition should be drafted in the broad sense. The committee did not agree with the proposal.

### **5.2.2 Sauti ya Wanjiku organization**

34. According to Sauti ya Wanjiku, a local non-governmental organization, public participation is a core element of democratic governance devolved system. It is further embedded in the constitution with the sole responsibility of its operation upon the two levels of the governance.
35. The stakeholder noted that freedom of information is the cornerstone to good and steady governance, meaningful participation and efficiency enhancing transparency. Therefore, sustainable democracy depending on a knowledgeable citizenry whose access to a range of information enables it to participate more fully in public life, helps to determine priorities for public spending, equal access to justice and holds its public officials accountable, thus becomes more responsive to the social development needs of the entire population.
36. The sovereign power of the people is exercised at the national and county levels in accordance with Article 1 (4) of the constitution. As such the people have a huge role to place in devolved governance thus confirming that the principle of the public participation is a key pillar of the constitution.

#### **Recommendations:**

37. This concept should be rolled out to 47 county assemblies for its appropriate implementation.
38. Article 10 (2) (a), (b) and (c), the national values and principles of governance includes democracy and participation and accountability and more so a respect to the freedom of expression of all participants.
39. The need for timely access to information and reasonable access to planning and policy making process.
40. The need for a humble time for advertisement say that at least fourteen days in the popular media house and a most conducive venue for the meeting.
41. Public participation should be mandatory for effective engagement by both parties.
42. In terms of budget, an appropriate budget for each meeting with an estimated attendance of at least 100 people as a quorum.
43. Fully pledged budget for every important meeting involving Wanjiku to cover logistics norms from National and County governments
44. **Clause 4 (e)** Add it to read, promote community ownership of public decisions through the local grass root leadership
45. **Clause 5 (a)** Add it to read ....the public communities and organizations to be effected by the decision shall have a right to be involved in the decision making process from the very initial stage.
46. **Clause 2** Add to read...a person may request for information relating to the issues under consideration from the relevant office in advance.



47. **Clause 3(b)** All the information from government offices should be released freely if it entails interrogating projects

**Natural justice**

- a. Natural Justice organization opined that under clause 4 on Objects and purpose of the Act
  - b. **Proposed changes** The object and purpose of the Act is narrow. The framework should be broadened to include the following: *identify the conditions required to make the participation process credible and maximize interest and commitment from the stakeholders*
  - c. **Rationale for Proposed Changes** -The public participation is a critical social accountability mechanism. It enables citizen's holds state institution accountable and responsive to their needs. By their very nature, public participation implies that the public contribution will influence a decision. Therefore strong emphasis should be place on the adequate conditions for effective participation including transparency, accountability, etc.
  - d. **Under 5 (a)** on the Guiding principles in conducting public participation
48. Proposed changes - This clause should be amended to include "accurate, complete "access to information relating to the public offices and state organ policy formulation and implementation.
49. The clause should therefore read as follows: The need to provide accurate, complete and timely access to relevant information relating to public offices and state organs policy formulation and implementation.

**Rationale for Proposed Changes**-In order to facilitate effective public participation, timely access to information may not be adequate in itself. It is important and necessary that in addition to be timely, the information disseminated should be accurate, complete, and relevant and it in formats and mechanisms that are easy for all to access, understand and use or re-use

**Public Participation Bill No. 69 and 71 respectively of 2019 comments according to Council of Governors Organization**

The Council calls to attention the following for consideration;

50. There is already a draft public participation policy that has been tabled before the Cabinet. The house should await the adoption of the policy before discussing the bill and align the bills to the policy
51. Senate passed the Public Participation Bill No. 4 of 2018 and forwarded it to the National Assembly for consideration. There are 3 bills in the National Assembly which are similar and therefore there is a need for the Parliament to amalgamate the three (3) for smooth implementation of the law to avoid confusion.
52. The Senate's Public participation Bill No. 4 of 2018 and the Public Participation Bill of National Assembly Bill No. 69 (recommend the making of regulations for better

carrying into effect the provisions of the acts.) this will continue to cause further confusion if the regulations are different.

53. In recognition of the article 1 (4) of the Constitution of Kenya, that the sovereign power of the people is exercised at the National level and County level;
54. The existing County participation guidelines of 2016 and the need to align the draft National Legislation with the same including the constitution of Kenya, 2010, the County Governments Act 2012, Public Finance Management Act 2015, Existing enacted Thirty four (34) county public participation Acts, Standing orders, the Kenyan policy and framework on public participation spearheaded by the attorney General among others.
55. The Council of governors supports the Bill entrenching public participation into national legislation, a position which was included while enacting Article 184 (1) of the constitution of Kenya, 2010

#### **General comments**

56. Thirty-four (34) of the forty-seven (47) County governments have already enacted County Public Participation Acts. The council therefore proposes that the proposed bill should take these Acts into consideration and should County laws be obliged to align to the proposed Bill, then there should be a transition clause to give them time to align to the Bill.

#### **COMMENTS ON SPECIFIC PROVISIONS**

57. 5 guiding principles- The conduct of the public participation shall be guided by the following principles; (g) that public views shall be taken into consideration in decision making.
58. The Council of governors proposed amendments- Amend to read as follows;
59. (g) That the public views maybe taken into consideration in decision making.
60. Rationale/justification for amendment-The threshold set by Republic Vs County Government of Kiambu Ex parte Robert Gakuru and another [2016] EKLR the court held that public participation "... the mere fact that particular views during public participation have not been incorporated in the enactment(legislation) does not justify the court in invalidating the enactment in question. Therefore, the public's views may be considered in decision making.
61. Clause 10 of the Bill on publication of specific public participation guidelines-
62. Provisions of the clause in the bill- Each responsible authority shall publish the specific guidelines on the public participation devolved pursuant to section 9 (1) in the Gazette within three months of the commencement of this Act

#### **They proposed that the same be amended as follows-**

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



64. Rationale/justification for amendment -The timeline given is too short and it would not be possible to deliver the guidelines within the stipulated time.
65. The Committee agreed with this proposal to enable responsible authorities to formulate their own public participation guidelines in their respective sectors.
66. **Clause 12 (4) on reports:** The Council of governors provided that the annual report
67. Other additional paragraphs after paragraph that include-
68. a description of the activities and outcomes of public participation;
69. 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;
70. introduction that provides an overview of the structures established in the responsible authority to facilitate public participation including how information is communicated, inputs received and feedback processed;
71. how have the issues raised in the previous report by the National Assembly been addressed in the year under the review;
72. details of the number of people that have been engaged in the processes and at what level (National, County, Sub-county, Ward and Village;
73. how the principles of Public Participation (Section of the proposed Public Participation Bill, 2016) have been inculcated in the respective authority's processes:
74. What kind of information is availed to the public in a timely manner? Are there challenges with the provision of the information in any form, hard, electronic, braille or audio forms?
75. How accessible to the public is the process of formulating and implementing policies, laws and regulations including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards?
76. What measures has the responsible authority put in place to protect and promote the interest and the rights of minorities, marginalized groups and communities and have their access to relevant information been protected and promoted?
77. What opportunities has the respective authority established?
78. How has the legal standing of interested or affected persons, organization, and where pertinent community to appeal from or, review decision or redress grievances with particular emphasis on person and traditionally marginalized communities including women, youth, and disadvantaged communities been provided for?
79. What opportunities have been accorded to the roles and obligations of the respective authority and non-state actors in decision making processes and partnership? And as complementary authority and oversight been provided for?
80. How has the promotion of Private-Public Partnership (PPPs) such as joint committees, technical teams and citizens' commissions to encourage direct dialogue and concerned action sustainable development been facilitated in the responsible authority?

81. How have the reciprocal roles of non-state actor's participation and governmental facilitation and the oversight been recognized and promoted?
82. What efforts has the responsible authority made to train both its officers and the public to participate effectively;
83. A review of mechanisms of redress and grievances that has been put in place;
84. What are the key challenges the responsible authority has faced in the facilitating effective public engagement? And what mitigation has been sought;
85. Proposals to the county or National Assembly on what further actions such as amendments to the law and policies are needed to make public participation effective;
86. Any other information, that the responsible authority may consider relevant.
87. Justifications proposed amendments by the Council of governors in support of this insertion as it reflects the model format of what kind of information the responsible authority report on public participation should contain as provided by the county public Participation Guidelines, 2016.
88. Clause 12 (5) Reports-The responsible authority shall cause the annual report to be published and publicized in such other manner as the responsible authority may determine
89. Proposed amendments -Amend to replace 'may determine'
90. The responsible authority shall cause the annual report to be published and publicized in the most effective medium of communication in terms of reach and cost. Such mediums may include; televisions, brochures, newspapers, ICT, mass mailing websites, social media, community radio stations; public meetings, traditional media and notices in offices, places of worship, markets, schools, libraries, socials clubs, medical facilities and county government offices.
91. Rationale and justification for amendments- Strategic communication is critical and should be incorporated in all policy and developmental agendas. In further recognition of the existing County Public Participation Guidelines 2016 which are already guiding public participation in the counties and the need to align the draft National Legislation with the same.
92. Proposed amendments on the Public participation guidelines
93. Under paragraph 1 of the Schedule on Opportunities for public participation
94. Paragraph 1 (1) of the schedule provides that the responsible authority shall provide reasonable and meaningful opportunities for the public participation.
95. (2) In determining what is reasonable, the authority shall take into account the;
96. Nature of the legislation or decision to be made
97. Importance of the legislation or decisions;
98. The intensity of the impact of the legislation or decision on the public
99. The stakeholder proposed an amendment to that part by inserting a new part 3 as follows-
100. 3) In determining what is meaningful, the authority shall take into consideration;



101. *Clarity of the subject matter*: it is important to establish realistic and practical goals that have been accepted by all stakeholders to mitigate the public's expectations. Making promises that cannot be kept will undermine public confidence in the citizen participation process.
102. *Clear structure and process*: before public participation takes place, clear rules need to be set defining the conduct of the process, tools to be used and how final decisions will be reached.
103. *Access to information*; duty bearers should provide information in acceptable, easy to use formats.
104. *Opportunity for balanced influence*; the engagement rules should ensure a balance of opinion and avoid dominance or bias by section of the public
105. *Commitment of the process*; the proponents of the public participation must be willing to obtain and consider public input in decision making and ensuring that the public participation works
106. *Inclusive and effective representation*; mechanisms must be established to reach out to relevant stakeholders.
107. *A climate of integrity*; for the public to fully participate, government agencies and decision makers must be credible, honest and trustworthy.
108. *A belief of value of public input*; public input should result in better decision making and better governance.
109. *Capacity to engage*; ensuring that the agencies know how to design and implement public participation process. Both the agencies should have the knowledge and communication skills required to participate effectively in the process.
110. *Complete transparency*, the timely sharing of easily understandable and accessible information to educate the public about the issues and options.
111. *Bear in mind the standing conditions of the participants*. It is critical that facilitators understand their audience well. They should clearly discern the social and economic status;
112. Religious beliefs, ethnicity and clan of those engaging in the public participation. Knowledge levels, incomes and power wielded will influence the deliberations and ultimately have a bearing on the conclusion and the subsequent outcomes.
113. The justifications for amendments by the council was that it allows for uniformity of the standards, policies and methodologies across the 47 county governments and also allows for the harmonization of the national and the county policy of the national and county policy and methodologies relating to public participation in line with the County Public Participation Guidelines, 2016.
114. **Paragraph 2 to the Schedule** - public awareness
115. The council of governors was of the opinion that these part of the first schedule was ambiguous and should be deleted and replaced with the following- 'the responsible authority shall facilitate effective civic education programme which shall be steered by the national civic education guidelines and curriculum'



116. **Paragraph 4 (1) to the Schedule on Notices**
117. **Provision of the part 4 to the Schedule of states that** the relevant institution shall give the public adequate notice to make their input
118. The stakeholder was of the views that timelines required for adequate notice to the public.
119. **Paragraph 4(2) of the Bill** provides that for the purpose of paragraph (1), the responsible authority shall establish mechanism to enable the widest reach which may include; TV stations, ICT centers, websites, community radios stations, public meetings and traditional media
120. The stakeholder proposed that the responsible authority shall establish the most effective mechanism, to communicate in terms of cost and reach. Such mediums may include; TV stations, ICT centers, websites, community radios stations, public meetings and traditional media
121. The rational given for the proposal was that the provision in the Bill as is too confining. Strategic communication is critical and should be incorporated in all policy and development agendas. In further recognition of the existing County Public Participation Guidelines, 2016 which are already guiding public participation in the Counties and the need to align draft national legislation with the same
122. **Provision of paragraph 6 (1) to the Schedule on consultation framework**
123. The provision provides that before undertaking public participation, the responsible authority shall develop a public participation programme.
124. The council proposed that this part of the Schedule should be amended to read as follows-“before undertaking public participation, the responsible authority shall develop and publicize a public participation programme”
125. The council in its justification for supporting the amendment was of the view that it was not only important to develop the programme but there is need to publicize the programme in order for all the concerned stakeholders to be aware of where they can input.
126. **Paragraph 8 of the Schedule on the timeframe for public participation** which provides that every public participation forum shall be undertaken within a realistic timeframe for consultation, allowing reasonable period for each stage of the process.
127. The stakeholder proposed that part 8(1) of the bill should be deleted and substituted with the following new part-
128. “every public participation forum shall be undertaken within 21 days, upon the expiry of the notice given under guideline 4(1).”
129. The stakeholder proposed an insertion of a new paragraph two and three respectively as follows-
130. “8(2) the responsible authority may extend the period provided for in the guideline.”
131. “8(3) to ensure that all stages of the consultation process are completed.”

132. The justification given for the proposal was to ensure that there is clarity of timelines on the side of the r this is to ensure that there is clarity of timelines on the side of the responsible authority in terms of conducting the public participation forum.
133. **Paragraph 10 (1) to the Schedule on the** access to information for public participation.
134. 10(1)(a) of the Bill provides that the responsible authority shall Publish and distribute the documents for public consideration as widely as possible, including but not limited to providing hard copies, TV advertisement, websites, community radio announcements or traditional media;
135. The stakeholder proposes the amendment of that paragraph to add a timeline of 14 days' notice to the public before publication as follows-
136. 10(1)
137. Publish and distribute the documents for public consideration as widely as possible and made available to the public 14 days before public participation forum including but not limited to providing hard copies, TV advertisement, websites, community radio announcements or traditional media;
138. The justification given for this amendment was to provide for
139. Communication timelines are crucial to ensure that there is ample time to process the information, prepare for engagement and act accordingly. This is the ideal timeline proposed by the county public participation guideline, 2016.
140. **Paragraph 10(3) (b) to the schedule** which provides that section of the bill- 10 (3) A person may request for information relating to an issue under consideration,
141. May, where the authority incurs expenses in providing the information, be subject to payment of a reasonable fee.
142. The Council of governors proposes to amend the Proposed Amendments in sub-paragraph (b) as follows-
143. "(b) May, where the authority incurs expenses in providing the information, be subject to payment of a reasonable fee as per the published citizen service charter.
144. The justification is that the service delivery charters will standardize the fee payments in order to eliminate corruption.
145. **Paragraph 10 (3) (c) to the schedule which provides that** a person may request for information relating to an issue under consideration-
146. "c) May, be subject to confidentiality requirement of the authority
147. The Council of governors proposes to amend the Proposed Amendments in sub-paragraph(c) as follows-10(3) (c) -
148. "(c) May be subject to confidentiality requirement of the authority subject to the access to information Act of 2016
149. The justification provided was that access to information Act provides a comprehensive exclusion provisions hence all exclusions imposed by the authority should confer to it.
150. **Schedule 10 (4)- 10 (4) to the Schedule** which provides that subject to the provision 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-

151. The request is unreasonable in the circumstance;
152. Or the applicant fails to satisfy any confidentiality requirements imposed by the responsible authority.
153. The Council of governors proposes to amend the Proposed Amendments in paragraph (10) (4) by deleting sub-paragraph (a) and retaining sub-paragraph (b).
154. The rationale given for the deletion is that the provision is ambiguous and who determines what is 'unreasonable'? This will lead to confusion in limiting information to the public.
155. **Paragraph 10 of the Schedule** on the right of access to information under Article 35 of the constitution shall be limited to the nature and extent specified under this section
156. The Council of governors proposed a deletion of that sub-paragraph and substituted the same with the following-
  - e. "(10 (5) the right of access to information under Article 35 of the constitution shall be limited to the nature and extent specified under the access to information Act 2016.
157. The justification given is that the access to information Act supersedes any limitation imposed by this act hence should conform to the limitations imposed by the access to information Act, 2016 and not the Bill itself.
158. **Paragraph 13 (3) of the Schedule** is on conduct of public participation process which provides-
159. "(3) A person freedom of expression under Article 33 of the constitution shall be limited to the nature and extent specified under this section"
160. The Council of governors proposed a deletion of that sub-paragraph and substituted the same with the following-
161. "(3) A person freedom of expression under this section shall be limited by Article 33 of the constitution. The justification provided is that the constitution of Kenya supersedes all the laws and hence a Kenyan's right to expression.

#### **ADDITIONAL PROPOSALS**

162. As had been indicated the Committee held public engagements in various Counties, the Committee received both oral and written submissions, and the following were the key observations and recommendations from the various counties.

#### **GARISSA COUNTY**

163. During the public forum sessions in Garissa, members of the public submitted the following views on the Bill:-
164. There be a representative from Youth, Women, disabled and all other sectors of the society and advertised in advance to give ample time for the public to engage and therefore the need to pass the law earliest possible.

165. There is need to have a task force for monitoring and evaluation to be put in place to make sure all the projects are implemented on time and accordingly.
166. There is need to carry out all public participation at the ward level even Constituency Development fund both rural and urban interest or needs put into consideration with representatives from youth, women and disables. For the pastoralist the public participation forums need to be taken to their water points.
167. The people need to be informed of the meetings for public participation in advance and people of knowledge in the sector under discussion are consulted approach should be adopted in all government institutions before any project is carried out.
168. The need to include the law of the following requirements for public institution to follow,
169. Advertisement in the Media preferably in the local media
170. Equal sharing of resources
171. Prioritization of projects as per the peoples need.
172. Village level engagement in public participation and recommend that those who don't do public participation be prosecuted in a court of law.
173. Let it be obligatory in the law for the public to be consulted by all government's institutions and establish specific office to do all matters of public participation and carryout Public participation at ward level with the help of legal guidance provided by the governments.
174. The law to incorporate a provision for public participation to be carried out
175. At village level and water points for the pastoralists by the area chiefs since they work very closely with the people.
176. Politicians not to coordinate developments since some of them favor some areas like building schools and have no teachers and duplicate projects.

Public wants locally owned projects meaning the idea should originate from them. Duplication of projects without considering what the public wants in terms of their needs leads to misplaced priorities in service delivery.

#### **KITUI COUNTY**

177. During the public forum sessions in Kitui, members of the public submitted the following views on the Bill;-
178. There is too large area to cover in the Country so therefore there is the need to include the opinion of different interest group e.g. Orphans, single parents and children to be given priority in implementing the projects.
179. Emphasized the need for transparent and accountable process in all the stages of planning, implementation and evaluation of the projects through public participation and therefore the need to include that in the act.
180. Public opinions should be channeled through the MCA's, MP's and other government's officials to reach our governments through.



181. There is need for civic education for intended projects for the public to understand the need so therefore let the elected leaders collect citizens opinion for implementation and those who don't implement be punished.
182. The area of coverage in public participation needs to be at wards level, the number of people participating and venue needs to have good representation of the general public, the advertisement needs to be on a widely spread not secretive and finally documents need to be available early enough to enable the public to read and understand.
183. The disable share should be sent to through the chief and sub-Chief more so let them be given civic education and illiterates should also be given a chance to air their views.
184. There is need to have special consideration for dry areas.
185. The public opinions sought should be put into consideration.
186. Under Article 5 the members of the public requested for the need to have a clear structure for public participation done at the village level upwards, enough awareness be created, advertised at the local papers, FM Radio stations through social media for awareness, Village elders, Village Committees for the public affairs at the Constituency and National level Committees which are elected by the communities and be advertised in local FM Radio stations Churches and Mosques be used an avenue of public participation and finally all laws and projects passed without public participation is redone.
187. There is need to have Commissions at all levels of public participation within districts and Counties, provide enough time for public participation before decision making is done with a clear timetable in different part of the Country on need based and have a report prepared for all government agencies.
188. Let all groups of the society like the youths, women and religious groups be included in the public participation in key issues only, Penalties for those who don't adhere to public participation guidelines should be included in the law and more time should be given for public participation.
189. There is need for follow up mechanism and sanctions to be in the law for failure to do public participation, fine or jail or both.
190. There is the need to record public participation proceedings for record keeping.
191. Let there be a public feedback and justification for any decision made by the development officer in development matters.

#### **MOMBASA COUNTY**

192. During the public forum sessions in Mombasa, members of the public submitted the following views on the Bill:-
193. The Members of the public observed that there had not received information concerning the discussion on the Public Participation Bill and urged the Committee to



ensure that authorities seeking to carry out public participation should notify the public of the meetings in the local radio, television stations as well as on the social media.

194. It was observed that there was need for responsible authorities to budget for the allowances of stakeholders that they were to engage given that most of these people had abandoned their businesses to attend the forum.
195. Some of the things to be discussed like the budget process were said to be very technical and therefore the locals were not able to contribute comprehensively towards it. They emphasized on the need for civic education in complex matters.
196. Meetings should be held in accessible areas to even persons with disabilities to allow them to fully engage in the processes and the public felt that meetings held in administration offices and environments were not popular with the locals who feared these offices.
197. Some stakeholders were of the view that their contributions in the forum should be carried in the Bill and complained that some of those forums were being used by entities to just tick a box that they have carried out public participation but that the actions emanating from those forums were in total disregard to the views of the stakeholders.
198. One stakeholder wondered why laws were written in such complex terms and wondered if the same could be simplified.
199. The stakeholder insisted on the need for feedback mechanism to be enhanced by the responsible authority that carries out public participation.
200. Documents and instruments for public participation should be provided for way in advance before the dates of the meeting.

#### **KILIFI COUNTY**

201. During the public forum sessions in Kilifi, members of the public submitted the following views on the Bill;-
202. There is need to send the bill that is to be discussed by stakeholders before the arrival of the committee and further that ample time should be allocated for the sessions to allow the members of the public to understand the law before enacting it.
203. When dealing with specific aspects in an area for instance mining, then the members of the public should be allowed to engage with the individuals who want to mine in their region so as to get their views on the matter.
204. Some members of the public wondered why laws were not being drafted in Swahili language to allow the citizens to fully understand the law as most citizens especially the elderly did not understand English.
205. There was need for the authorities that needed to subject any matter to public participation to ensure that advertisements were not just done with the administration but also in local radio stations as well as social media to cater for the youth.

206. There was a need to pay and plan for finances for conducting public participation, seeing as the Bill provides for civic education for the public and that participant who leave their day to day chores to come and participate in an agenda in their area they should be compensated by each responsible authority.
207. There are currently no channels to pass public grievances and the public are never called for public participation by both levels of governments.
208. The members of the public suggested that going forward stiffer penalties should be meted upon individuals, organizations and entities that carry out drastic changes in the community without involving the public from the onset as they said that some families have lost property when the same is taken over forcibly by institution without prior consultation.
209. The need to create follow up structures both at the National and County government to decimate the necessary information and set a threshold on the standard needed for public participation like holding it in sub County or County Commissioner level.

#### **NAROK COUNTY**

210. During the public forum sessions in Narok, members of the public submitted the following views on the Bill;-
- a. There is need to allocate more time to allow the members of the public to understand the law before enacting it.
  - b. There is need for oversight on the budgetary allocation of public institutions since a lot of debt is being accrued, the right of the public to contribute their views through public participation since they are currently not involved in the decisions formulation and implementation therefore the inclusion of people leaving with disability and the marginalized, Representatives from Business Community, chiefs and also school boards.
  - c. A well elaborate programme and timeline on public participation be anchored in legislation.
  - d. Sighted the missing number 4 under section 6. Under section 6 number 5 - the sworn statement should be made available to the person intended to in 1hr before instead of 30 minutes which is not enough. A directorate should be created called directorate of public participation in all government agencies. The threshold for the people to participate should also be stated clearly in the law and the time to conduct the public participation e.g. one week by also decimating the information on vernaculars radio FM stations.
  - e. There is need to pay and plan for finances for conducting public participation and the Nyumba kumi set up is a good arrangement to use for public participation. a mandatory civic education for the public and there is nowhere to complain to in case of a problem
  - f. There are currently no channels to pass public grievances and the public are never called for public participation by both levels of governments.



- g. The members of the public suggested that,
211. There is need for the people to understand what is public participation and civic education and vernacular radio and TV stations needs to be used for civic education and public participation and the venue should be the nearest place in a designated place.
212. A body to oversee public participation needs to be created to monitor, implement and evaluate be established with accessible office Countrywide.
213. Quorum for people who come for public participation should not be less than 100.
214. In case of no public participation in governments projects let the project be stopped officer in charge of decision making be fined 5millin or jailed as per the law. The project should start a fresh in line with the public input after proper public participation.
- h. 8. The penalties in case of organizations not fulfilling the requirement under section 5(a) of this bill. Bottom up need assessment process guided projects region by region for ownership of projects by the locals with clear procedure on land acquisition and therefore chapter six on integrity should be applied.
215. The need to create follow up structures both at the National and County government to decimate the necessary information and set a threshold on the standard needed for public participation like holding it in sub County or County Commissioner level.

#### **NYAMIRA COUNTY**

216. During the public forum sessions in Nyamira, members of the public submitted the following views on the Bill;-
217. The increase of public participation time in order for the public to contribute their views freely to every sector and also public feedback process to a specific authority and public participation is done from Monday to Friday.
218. The national and county governments should avail enough copies of the relevant documents for good public participation to be done and prior Civic education carried out and finally monitoring and evaluation for past projects or budget done with a responsible officer accompanying all forums.
219. The need to have monitoring and evaluation framework at sub-County Committees headed by the chiefs, youth, women and under 5(f) on timelines for public participation suggested 7 days before public participation date and under 5 (e) on equitable access to information be 3 to 4 months before budget.
220. The following were Suggested;
221. Wards and sub-location level to be the lowest level for public participation.
222. The disable Members of the society should be given means of transport.
223. The channels of invitation are widened to allow for more people.
224. The responsible office should be clear with good security arrangement.

225. Prosecution of defaulters should be factored in the law with a fine of not less than 1 million.
226. Quorum for public participation should be 200 people or more with representation from all sectors of the society with an interpreter provided.
227. The language to be used to conduct public participation should be understandable e.g. Kiswahili. Office of the chief should be strengthened with enough powers in order to facilitate public participation.
228. Under; -
229. 6(a) suggested Members of the public should attend public participation at the nearest place like the location level and be made accessible to all.
230. 3(b) citizens should be aided by the state to give evidence.
231. Delegation of responsibilities for public participation should not be below director level.
232. Quorum strategic shareholders including special group's needs to be included and publicize the public participation forum.

### **KAKAMEGA COUNTY**

233. During the public forum sessions in Kakamega, members of the public submitted the following views on the Bill; -
234. Documents that were to be used in public participation should be made available to the stakeholders in order for them to engage in the process as opposed to delivering the documents on the material day.
235. Simplified versions of complex documents should accompany the complex ones to enable the people to understand them and give meaningful views during the forums.
236. Authorities seeking to carry out public participation were urged to provide for the facilitation allowances to the public who come attend the forums so as to draw many people who would enrich the process.
237. The members of the public opined that sufficient notice of at least fourteen days should be given to stakeholders on meetings that were to be carried out for them to be able to plan adequately for the meetings.
238. They urged responsible authorities to ensure that they publicise fora in the local radio stations as they had a wide listenership as opposed to placing the same in newspapers which were not accessible to most people. The young ones opined that authorities should use social media to publicise those forums.
239. The issue of venues that host meetings also arose and some stakeholder's were not comfortable with having meetings at the offices of the county administrators but preferred to be in neutral venues where they would engage without fear of victimization.

240. There should be stiffer penalties for entities that failed to implement the provisions of this Bill once it was enacted so as to ensure that nothing of great ramifications happened without them engaging the public.

**BUSIA COUNTY ON 30<sup>TH</sup> NOVEMBER, 2019**

241. During the public forum sessions in Busia, members of the public submitted the following views on the Bill;-
242. Public participation meetings should be carried out in the villages.
243. Local media houses should be used to disseminate information on public participation.
244. *Change of title* to Public Engagement Bill
245. The Ombudsman should be the custodian of this law.
246. Clause 8-The office of the public relations officer should be decentralized.
247. Facilitations to all participants who attend the fora, minimum of kshs1,000
248. Mobilization for public participation events should be through the county commissioner.
249. Clause 5e-A 5 days' notice should be given prior to Public Participation events.
250. Penalties should be a minimum of 5years imprisonment or a fine of not less than kshs 500,000 on breaking this law.

**SAMBURU COUNTY ON 23<sup>RD</sup> NOVEMBER, 2019**

251. During the public forum sessions in Samburu County, members of the public submitted the following views on the Bill;-
- i. Bills, Acts, information about a project which the members of the public are to be called upon to give their views, opinions and concerns should be published in Kiswahili and local languages in addition to English for the local people to understand the contents of documents and provide their opinions from an informed point of view.
  - ii. Public participation on any matter should be conducted at the lowest level of administration i.e. village level.
  - iii. There should be social inclusion of all people regardless of ethnic group, origin, gender, economic status in seeking the views of the stakeholders.
  - iv. The Public Participation Bill should include clearly spell out penalties and types of offences for officers and institutions that may flout the laws on public participation. The following proposals on penalties were given;
    - (a) A fine of Kshs 100,000- or 1-year imprisonment or both
    - (b) A fine of Kshs 15 million- or 10-year imprisonment or both.



- v. The persons or institutions conducting public participation should provide feedback to the public/stakeholders on the extent to which their opinions or views have been considered before implementation of the proposed laws of project or before a decision is made.
- vi. The bill on public participation be correctly numbered
- vii. The public should be notified of the venue and time for conducting public participation at least 7 days before and should not be changed before the meeting.
- viii. The persons or organizations should provide a downloadable document online on which the stakeholder's views are required and further an online platform through which the members of the public can submit their written memoranda.

#### **ISIOLO ON 22<sup>nd</sup> NOVEMBER, 2019**

252. During the public forum sessions in Isiolo County, members of the public submitted the following views on the Bill:-

- i. There is need to define and clarify in the Bill the word "facilitation" as regards the members of the public attending public participation forum and the extent of facilitating them. Member of the public suggested that persons attending the forums be provided transport and meals.
- ii. Need for access to information: Members of the public suggested that there is need for access to information on the contents of the proposed projects, bills, treaties, public appointments etc. before the appointed time to give their views.
- iii. Adequate notice: Members of the public request adequate notice, of at least 7 days, for meetings on proper public participation.
- iv. Venue of the meeting on public participation should be an open forum and accessible to all.
- v. All memoranda submitted whether oral or written should be given equal consideration
- vi. Members of the public requested the use of various media for calling for memoranda from the stakeholder's i.e. vernacular radio stations, chief offices notice board and community leaders.
- vii. Use of various languages during public participation forum including sign language and Braille.

## **6.0 CHAPTER SIX**

### **6.1 Committee Recommendations**

272. In light of the submissions in the Memoranda, the oral representations made before the Committee and the Committee deliberations on the Bill, the Committee recommends—

#### **CLAUSE 2**

273. THAT, clause 2 of the Bill be amended by—

- (a) deleting definition of the term “civic education” and substituting therefore the following new definition—  
“Civic education” means the provisions of information and learning experiences to equip and empower citizens to participate in democratic and governance processes”.

#### **Justification:**

To delete the definition of “civic education” provided for in the bill and substitute with a more elaborate definition that will properly define civic education which is a pertinent element of public participation.

#### **CLAUSE 5**

274. THAT, clause 5 of the Bill be amended by-

- (a) By deleting the word “shall” and substituting therefore the word “may”;
- (b) inserting the following new paragraphs immediately after paragraph (c)—

“(ca)” the provision of approved and authenticated official documents given to the public for discussion; and

“(cb)” the public should receive clear information that does not provide room for ambiguity;

- (c) deleting paragraph (e) and substituting therefore the following new paragraph-

“(e)” ensures equitable access to and timely access to information, data documents and any other information relevant or related to policy formulation, implementation and oversight that participation made in order to participate in a meaningful manner.

#### **Justification:**

The amendment seeks to provide for the need for provisions of documents and information on the subject matter that is going to be used in any given debate.

The threshold set by the courts in determining the extent of public participation is not something that can be forced upon an entity when making certain decisions. Using the term “shall” provides a mandatory connotation which may not be possible to implement.

**CLAUSE 6**

**275.THAT, clause 6 of the Bill be amended by renumbering the existing sub-clause (5) as (4)**

Justification: This amendment was done in order to correct a typographical error in the Bill.

**CLAUSE 9**

**276.THAT, clause 9 of the Bill be amended by inserting the words “in reference Clause (5)” immediately after the words “develop guidelines”.**

**Justification:**

To ensure that institutions adhere to the set out guiding principles provided for in clause (5).

**CLAUSE 10**

**277.THAT, clause 10 of the Bill be amended by inserting the words “on their websites” immediately after the words “in the *Gazette*”.**

**Justification:**

To ensure that specific public participation guidelines are widely circulated to allow for widespread engagements.

## SCHEDULE

s. 9(2)

### GENERAL PUBLIC PARTICIPATION GUIDELINES

Opportunities  
for public  
participation.

1. (1) The responsible authority shall provide reasonable and meaningful 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.

Public  
awareness.

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

Factors to be  
considered.

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

Notice.

4. (1) The relevant institution shall give the public adequate notice to make their input on the issue.  
  
(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;
  - (f) Any other media that may be prescribed.



- Access to public participation processes. 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.
- (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.
- Consultation framework. 6. (1) Before undertaking public participation, the responsible authority shall develop a public participation programme.
- (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.
- Electronic platform. 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.
- Timeframe for participation. 8. Every public participation forum shall be undertaken within a realistic timeframe for consultation, allowing reasonable period for each stage of the process.
- Consultation documents. 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.
- Access to information for public 10. (1) The responsible authority shall—
- (a) publish and distribute the documents for consideration as widely as

participation.

possible, including but not limited to providing hard copies, television, advertisements, 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.

Processing of responses. 11. The responsible authority shall ensure —

- (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.

Credibility and integrity of the Process. 12. The responsible authority shall—

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

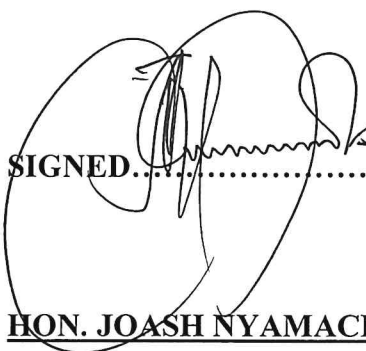
- (b) be responsible for the validity of all data collected, analyses performed, or plans developed by it or under its direction; and
- (c) not engage in conduct involving dishonesty, fraud, deceit, misrepresentation or discrimination;
- (d) not accept any payments or gifts given contingent on an interested 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.

Conduct in public participation processes 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.

(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.

SIGNED..... DATE 28/2/2020



**HON. JOASH NYAMACHE NYAMOKO, HSC, MP**

**CHAIRPERSON COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY**





ANNEXURE 1

NATIONAL ASSEMBLY ADVERTISEMENTS IN THE  
PEOPLE'S DAILY DATED 11<sup>TH</sup> NOVEMBER, 2019.

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1. *Journal of the American Medical Association*, 1997; 278: 1019-1024.

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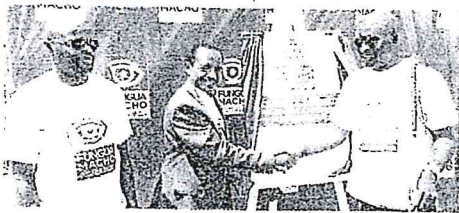
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MICHAEL R. SIALA, EBS  
CLERK OF THE NATIONAL ASSEMBLY



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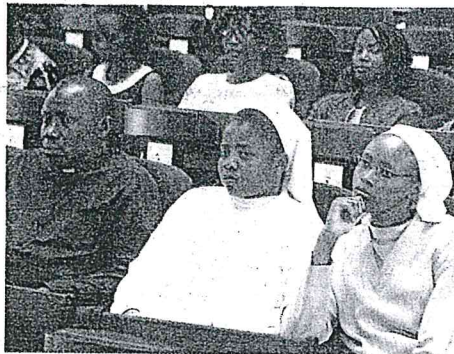
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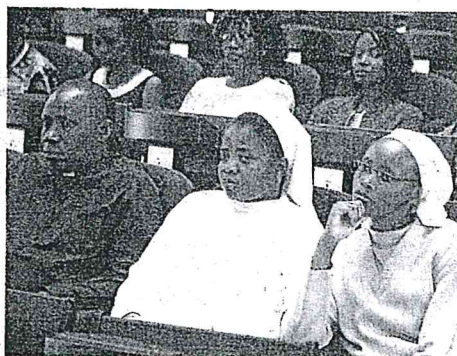
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Age (months)	Male (%)	Female (%)
0	~10	~10
3	~85	~75
6	~75	~65
9	~65	~55
12	~55	~45

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### NOTIFICATION FOR PUBLIC HEARINGS BY PARLIAMENTARY BROADCASTING AND LIBRARY COMMITTEE

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Pursuant to the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee will be undertaking public hearings on the said Bill in the following counties from 9.00 am-5.00 pm:-

No.	COUNTY	VENUE/TOWNS	DATE
1.	Kitui	Kamwungu Market, Kyuso Sub-County	Friday, 22 <sup>nd</sup> November, 2019
2.	Isiolo	Isiolo Police Canteen Grounds	Friday, 22 <sup>nd</sup> November, 2019
3.	Mombasa	Kenya School Government Hall	Friday, 22 <sup>nd</sup> November, 2019
4.	Garissa	Garissa Library	Saturday, 23 <sup>rd</sup> November, 2019
5.	Kitui	Pwani University Lecture Hall	Saturday, 23 <sup>rd</sup> November, 2019
6.	Samburu	Alamiano Pastoral Centre	Saturday, 23 <sup>rd</sup> November, 2019
7.	Narok	Seasons Hotel	Friday, 29 <sup>th</sup> November, 2019
8.	Busia	Breeze Hotel	Friday, 29 <sup>th</sup> November, 2019
9.	Nyamira	Magawagwa, Esapiga Field Chief's Office	Saturday, 30 <sup>th</sup> November, 2019
10.	Kakamega	Mumias DCC Hall, Matungu	Saturday, 30 <sup>th</sup> November, 2019

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ANNEXURE 2

MINUTES OF THE COMMITTEE





**MINUTES OF THE 3<sup>RD</sup> SITTING OF THE SELECT COMMITTEE ON  
PARLIAMENTARY BROADCASTING AND LIBRARY HELD ON FRIDAY 28<sup>TH</sup>  
FEBRUARY, 2020, AT 2:00 PM IN ENGLISH POINT MARINA IN MOMBASA.**

**PRESENT**

1. Hon. Joash Nyamache Nyamoko, **HSC, MP –CHAIRPERSON**
2. Hon. Liza Chelule, Chepkorir, MP- **VICE-CHAIRPERSON**
3. Hon. James Gakuya, Mwangi, MP
4. Hon. Daniel Nanok Epuyo, MP.
5. Hon. Dr. Pamela Awuor Ochieng, MP.
6. Hon. Dr. Irene Kasalu Muthoni, MP.
7. Hon. Eric Njiru, Muchangi, MP.
8. Hon. Gertrude Mbeyu Mwanyanje, MP
9. Hon. Hiribae Said Buya, MP.
10. Hon. Jackson Lekumontare, LentoiJoni, MP.-
11. Hon. James Gichuhi.Mwangi, MP
12. Hon. Joseph Kipkosgei, Tonui, MP.
13. Hon. Justus Makokha, Murunga, MP
14. Hon. Patrick Munene Ntwiga, MP
15. Hon. Zuleikha Hassan Juma, MP.
16. Hon. Paul Nzengu Musyimi, MP

**ABSENT WITH APOLOGY**

1. Hon. Dr. Lilian Gogo, Achieng MP
2. Hon. Mercy Wanjiku Gakuya, MP
3. Hon. Anab Gure, Mohamed, MP
4. Hon. Charles Kamuren, MP.
5. Hon. Richard Ken Chonga, M.P.
6. Hon. Wangari Mwaniki, MP
7. Hon. Jonah Mburu Mwangi, MP

**IN-ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

- |                               |   |                    |
|-------------------------------|---|--------------------|
| 1. Mr. Hassan Abdullahi Arale | - | Clerk Assistant II |
| 2. Mr. Johnson Kioko          | - | Clerk Assistant II |
| 3. Ms. Marlene Ayiro          | - | Legal Counsel      |
| 4. Ms. Lorna Akatch           | - | Researcher III     |
| 5. Ms. Christine Sabdio       | - | Office Assistant   |
| 6. Mr. Wilson Angatangoria    | - | Serjeant at arms   |

**MIN.NO.00007/2020:PRELIMINARIES**

The meeting was called to order at noon, after which prayer was said.

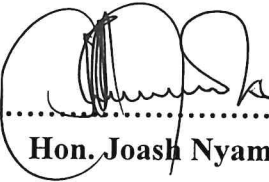
**MIN.NO. 00008/2020: CONSIDERATION AND ADOPTION OF THE REPORT OF THE PUBLIC PARTICIPATION BILL, 2019 NATIONAL ASSEMBLY BILL, 69**

After deliberation, members adopted the report on the public participation Bill, 2019 National Assembly Bill, No.69 as the true copy of the deliberation after it was proposed and seconded by Hon. Joseph Kipkosgei, Tonui, MP and Hon. Hiribae Said Buya, MP respectively.

**MIN.NO. 00009/2020: ADJOURNMENT**

The meeting adjourned at 2.30 pm. The next meeting will be called on notice.

Sign.....



Date.....

28/02/2020

Hon. Joash Nyamache Nyamoko, HSC, MP (Chairperson)

## **ANNEXURE 3**

## **ADOPTION LIST**



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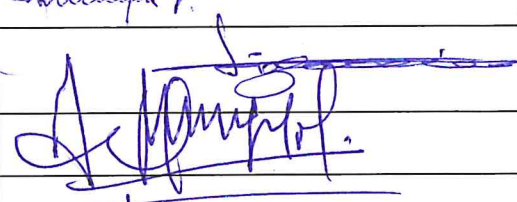
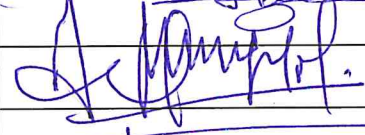

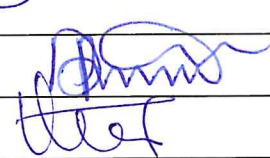

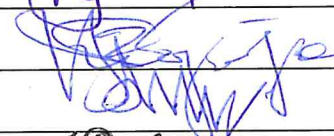
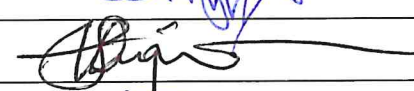

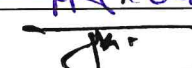
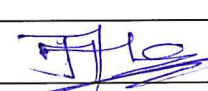

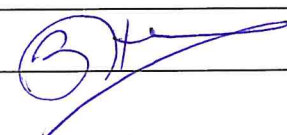
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# COMMITTEE ON PARLIAMENTARY BROADCASTING AND LIBRARY

## ADOPTION LIST FOR THE REPORT ON THE PUBLIC PARTICIPATION BILL, 2019.

DATE: 28/2/2020 TIME: 2:30 PM VENUE: English Point, Nambesa

	NAME	SIGNATURE
1	Hon. Joash Nyamache Nyamoko, HSC, MP, Chairperson	
2	Hon. Liza, Chelule, Chepkorir, MP-Vice Chairperson	
3	Hon. Daniel Nanok Epuyo, MP	
4	Hon. James Gakuya, Mwangi, MP	
5	Hon. Dr. Lilian Gogo Achieng, MP	
6	Hon. Dr. Pamela Ochieng, Awuor, MP	
7	Hon. Dr. Irene Kasalu, Muthoni, MP	
8	Hon. Anab Gure, Mohamed, MP	
9	Hon. Charles Kamuren, MP	
10	Hon. Eric Njiru Muchangi, MP	
11	Hon. Gertrude Mwanyanje, Mbeyu MP	
12	Hon. Hiribae Said Buya, MP	
13	Hon. Jackson Lekumontare, LentoiJoni, MP	
14	Hon. James Gichuhi, Mwangi, MP	
15	Hon. Joseph Kipkosgei, Tonui, MP	
16	Hon. Jonah Mburu Mwangi MP	
17	Hon. Justus Makokha, Murunga, MP	
18	Hon. Mercy Gakuya, Wanjiku, MP	
19	Hon. Patrick Ntwiga, Munene, MP	
20	Hon. Paul Nzengu, Musyimi, MP	
21	Hon. Richard Kiti, Ken Chonga, MP	
22	Hon. Wangari, Mwaniki, MP	
23	Hon. Zuleikha Hassan, Juma, MP	

JOHNSON KIOKO

FOR -CLERK OF THE NATIONAL ASSEMBLY



## **ANNEXURE 4**

## **WRITTEN SUBMISSIONS.**

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# KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"

Telegrams: "LAWREFORM" NAIROBI  
Telephone: Nairobi, +254-20-2241186/2241201  
Fax: +254-20-2225786  
www.info@klrc.go.ke

When replying please quote

Ref. No. **KLRC/RES/45Vol.XV**  
and Date



KENYA LAW REFORM COMMISSION  
REINSURANCE PLAZA  
3RD FLOOR  
TAIFA ROAD  
P.O. Box 34999-00100  
NAIROBI, KENYA

① *DLoms*  
*Please deal.*  
*29/11/19*

27<sup>th</sup> November, 2019

The Clerk of the National Assembly  
Clerk's Chambers  
Parliament Buildings  
NAIROBI

RE: **COMMENTS ON THE PUBLIC PARTICIPATION BILL, 2019 (NATIONAL ASSEMBLY BILL NO. 69 OF 2019)**

Please refer to the above subject and your letter thereon.

Enclosed herewith please find the Commission's comments on the Public Participation Bill, 2019 (National Assembly Bill No. 69 of 2019) for further action.

As always, we thank you for your continued support to the Commission.

*Sinyo*  
Hon. Josephine O. Sinyo, EBS  
Ag. SECRETARY/CEO

Encl.

② *KIOKO*

*Please deal*

*PA*

*02/12/19*





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COMMENTS ON THE PUBLIC PARTICIPATION BILL, 2019 (NATIONAL ASSEMBLY BILL NO. 69 OF 2019)

INTRODUCTION

We refer to a letter written to the Kenya Law Reform Commission dated 12 November, 2019 for comments of the above Bill.

The Bill seeks to provide a framework for effective participation pursuant to relevant provisions of the Constitution. In furtherance to this, the Bill has enunciated various provisions and provides for guiding principles, responsible authorities, public participation officers, development of specific guidelines, estimates for public participation, among others.

It is our view that the Bill is well drafted, captures the spirit of the Constitution and needs to be harmonized with the draft Policy on Public Participation, 2018, where necessary. The guiding principles provided in clause 5, and provisions in the Schedule are well captured.

SPECIFIC COMMENTS:

CLAUSE		COMMENTS	RECOMMENDATIONS
2.	Interpretation	Civic education, public, and public participation	These definitions are restrictive and should be harmonized with exiting acceptable definitions.

9.	Development of specific public participation guidelines.		There may be need to cross reference with clause 5 on guiding principles while developing the specific public participation guidelines.
Schedule and entire Bill.	1. General Public Participation Guidelines.	Decisions as referred by the Constitution in Article 10 relates to public policy decisions and not any other decision. Decisions as provided in the bill may be subject to misinterpretation.	Decisions should be redrafted to mean public policy decisions.  Public policy definition should be provided in the interpretation section. This definition should be drafted in a broad sense.
	4. (2) (f)	What kind of newspaper is not clear.	Provide for daily newspapers of wide circulation.

#### REFERENCES

Constitution of Kenya, 2010

National draft Public Participation Policy, 2018



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19/11/19



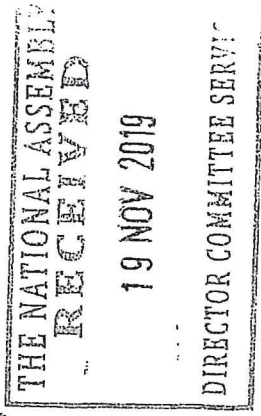
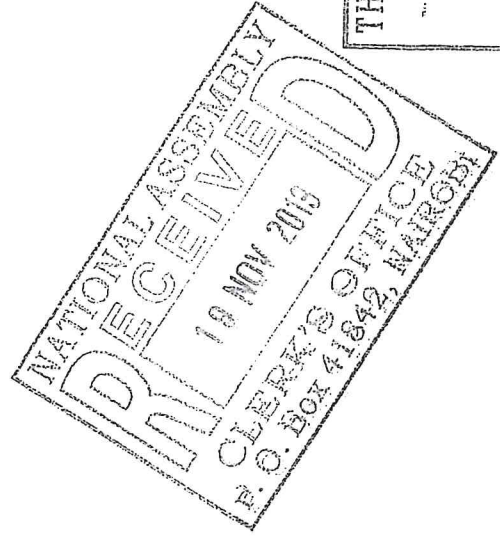
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y/ok'd deal  
Please  
19/11/19

To: Mr. Micheal R. Sialai EBS,  
Clerk of the National Assembly,  
Office of the Clerk/ Secretary, Parliamentary Service Commission,  
Main Parliament Building,  
P. O. Bos 41842-00100,  
Nairobi.

To: Hon. Joash Nyamache Nyamoko,  
Chairperson,  
Parliamentary Broadcasting and Library Committee,  
Main Parliament Building,  
P. O. Bos 41842-00100,  
Nairobi.

To: Hon. William Cheptumo Kipkiror,  
Chairperson,  
Justice and Legal Affairs Committee,  
Main Parliament Building,  
P. O. Bos 41842-00100,  
Nairobi.

18<sup>th</sup> November 2019



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**RE: Memorandum on The Public Participation Bill (National Assembly Bills No.69 of 2019) and The Public Participation Bill (National Assembly Bill No.71 of 2019)**

**Introduction**

The Institute for Social Accountability (TISA) is a civil society initiative committed towards the achievement of sound policy and good governance in local development in Kenya, to uplift livelihoods of, especially, the poor and marginalized. TISA has been operational since March 2008 and is a locally registered trust. TISA has engaged with various relevant state and non-state actors in the quest to promote effective local governance in Kenya. Since the year 2011, TISA has been working together with like-minded networks, organizations and individuals for the promotion and protection of devolution and its implementation as enshrined in the Constitution of Kenya 2010.

The Public Participation Bill (National Assembly No.69 of 2019) seeks to enhance, promote and facilitate public participation in governance processes. This is through provision of a framework that will allow 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 processes and ultimate decision making requires the participation of the people of Kenya. This Bill therefore proposes to provide a mechanism to facilitate effective and coordinated public participation. If this Bill is enacted it will give effect to the constitutional principles of public participation and participatory democracy as indicated in Articles 1, 10, 35, 69, 118, 174, 184, 196, 201 and 232 of the Constitution respectively.

The Public Participation Bill (National Assembly No.71 of 2019) seeks to establish a legal framework for the involvement of the public in the process of decision making by state organs and public offices this is to allow for an informed, effective and efficient engagement of the public in decision making. 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 processes and ultimate decision making requires the participation of the people of Kenya. This Bill therefore proposes to provide a mechanism to facilitate effective and coordinated public participation. If this Bill is enacted it will give effect to the constitutional principles of public participation and participatory democracy as indicated in Articles 1, 10, 35, 69, 118, 174, 184, 196, 201 and 232 of the Constitution respectively.

While TISA commends the National Assembly in its effort to facilitate public participation in governance processes by coming up with the proposed Bill and for providing the opportunity for non-state actors to input into the development process of the bill, TISA wishes to make the following observations and recommendations.

1. The publication and publicization of the two Bills originating from the same house caused mass confusion to the public. This confusion undermines effective public participation to occur. National Assembly should have explained why they have called for memoranda for two separate bills and



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why they are proposing two separate bills that are speaking to the same issue. There is also lack of clarity on what happened to the Public Participation Bill that originated from the Senate.

The call for memoranda was done within a short timeline that does not allow for effective public participation to occur. The call for memoranda only allowed for submissions to be made within a week. It is unfair and unreasonable to expect citizens to understand and internalise the proposed bills well enough to give an informed input.

**We recommend** that the need for one concurrent Bill that speaks to effective and transparent public participation. There also needs to be specific timelines given for when calls for memoranda need to be done. We recommend 21 days; this will allow citizens to internalise and understand the bills well enough to respond. There should also be a citizen version of the Bill to allow citizens to fully understand and respond to the call for memoranda.

2. While it is noted that there is currently an ongoing process to develop a national public participation policy spearheaded by the department of justice under the office of the Attorney General. We are greatly concerned that there is a Public Participation Bill being developed in the absence of an approved national public participation policy.

**We recommend** that the public participation policy should precede the public participation legislation. The policy should inform the legislative framework of what public participation should be.

3. It has been almost 10 years since the passing of the constitution of Kenya and there is no public participation policy or legal framework put in place. TISA also notes that Kenya is currently a member of the Open Government Partnership one of the key promises under commitment 4 of public participation calls for the development of a public participation bill therefore the enactment of this bill is essential towards having an accountable and transparent government. However, the Bill has taken too long to enact given the timelines that were given. There has been no reason given as to why there is a delay.

**We recommend** that the public participation policy should be approved and enforced immediately, and the legislation should follow soon after. The timelines given in the Open Governance Partnership should be clearly adhered to.

#### **The Public Participation Bill (National Assembly No.69 of 2019)**

#### **Review and Proposals**

Clause and provision of section in the Bill	Comments	Recommendations
Clause 4 (a)	This provision does not encompass the sovereign power of the people of Kenya and	This provision should be amended to include both article 1 and 174 of the constitution to

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<p>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.</p>	<p>ignores the powers of self-governance bestowed onto the citizens.</p> <p>The constitution of Kenya under the objects and principles of devolved government under Article 174 give powers of self-governance to the people and enhance their participation in the exercise of the powers of the state in making decisions that affect them while recognizing the powers of the communities to manage their own affairs and to further their own development.</p> <p>Article 1 of the Constitution states that all sovereign power belongs to the people of Kenya.</p>	<p>holistically represent all the rights that citizens have in regard to participation in the decision-making process.</p>
<p>Clause 5.</p> <p>The conduct of public participation shall be guided by the principles that-</p> <p>(a) The public, communities and organisation to be affected by a decision shall have a right to be involved in the decision-making process;</p> <p>(b) There shall be a provision of effective mechanisms for the involvement of the public, communities and</p>	<p>There are key principles provided for by section 87 of the County Governments Act 2012 that could better expand and provide for effective public participation.</p>	<p>The act should be amended to include;</p> <ol style="list-style-type: none"> <li>1. The provision of approved and authenticated official documents given to the public for discussion.</li> <li>2. The public should receive clear information that does not provide room for any ambiguity.</li> <li>3. That there will be multiple opportunities for public participation.</li> </ol> <p>The section 5 (e) should be amended to include that there will be equitable access to and <b>timely access to information, data,</b></p>



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<p>organisations that would be affected by or be interested in a decision;</p> <p>(c) There shall be enhanced participation through civic education for purposes of creating an enlightened and empowered citizenry</p> <p>(d) Ensures inclusivity of the public generally and not limiting involvement to sector stakeholders;</p> <p>(e) Ensures equitable access to and timely provision of the information that participants need in order to participate in a meaningful manner;</p> <p>(f) Clear and reasonable timelines shall be established at every stage of decision making and that the public shall be informed of the timelines;</p> <p>(g) Public views shall be taken into consideration in decision making;</p> <p>(h) Ensures development of appropriate feedback mechanisms;</p> <p>(i) Facilitates allocation of adequate financial resources for purposed if undertaking public participation;</p> <p>(j) Ensures adherence to the national values under article 10 of the constitution;</p> <p>(k) Ensures adherence to the principles of leadership and integrity set out in Chapter Six of the constitution</p>		<p>documents and any other information relevant or related to policy formulation, implementation and oversight that participants need in order to participate in a meaningful manner.</p>
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<p>(l) Ensures adherence to the principles of public participation that may be prescribed by any written law;</p> <p>(m) That there shall be a monitoring and evaluation framework for public participation processes undertaken; and</p> <p>(n) Ensures promotion of sustainable decisions recognising the needs and interests of all participants, including decision makers.</p>	<p>The provision should be amended to include that the developed guidelines will be <b>taken up to the village level.</b></p>	<p>This provision should be amended to include that the delegation of duties should be to an officer that fully understands the public</p>
<p>Clause 7 (1)</p> <p>The entities specified under section (2) shall in the carrying out of its mandate under this Act, develop guidelines for the conduct of public participation.</p>	<p>The provision is too broad, public participation should reach each citizen and the provision should be amended to reflect this. Streamlining of the guidelines to also include County Governments will allow for better public participation that is not centralised. County governments as per sections 50-53 of the County Governments Act places responsibility to the sub county, ward and village administrators to coordinate manage and supervise the coordination of citizen participation in the development of policies, plans and service delivery.</p>	<p>There is too much discretion here that could allow for anyone to take up the role of being a public participation officer.</p>
<p>Clause 8 (2)</p> <p>The chief executive officer or accounting officer of a responsible authority may</p>		



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<p>delegate the performance of the duties as the public participation officer to any other officer of that entity.</p>		<p>participation guidelines and has the proper qualifications that will advocate for effective public participation.</p> <p>Amend to add that technical officers should be part of public participation to guide the discussions.</p>
<p>Clause 12 (4)</p> <ul style="list-style-type: none"> <li>a) A description of the activities and outcomes of public participation</li> <li>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</li> <li>c) Any other information that the responsible authority may consider relevant.</li> </ul>	<p>This provision is too narrow, there are other important aspects of the report that need to be included to give a comprehensive report of public participation during the year in both National and County governments.</p>	<p>This provision should be amended to include that the report will:</p> <ol style="list-style-type: none"> <li>1. An overview of the structures that were established by the relevant responsible authorities. It should include how the information was communicated, what inputs they received, level of uptake for proposals made by citizens and reasons why they were not taken up or why it was taken up and the feedback processed.</li> <li>2. How have the issues raised in the previous reports have been addressed in the year under review?</li> <li>3. The number of people engaged in the various processes and at what level whether it was at National, County, ward or village level</li> <li>4. The information availed to the public, whether it was done in a timely manner, whether the information</li> </ol>

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		<p>was accessible enough for persons with disabilities were assisted appropriately (a braille version, audio etc) as well as what measures have been put in place to help the marginalised.</p> <ol style="list-style-type: none"> <li>5. The demographics of the people that attended the public participation forums or made submissions of memoranda (how many women, youth and persons with disabilities).</li> <li>6. The opportunities that the responsible authority established.</li> <li>7. Whether the responsible authorities made any efforts to train its officers and the public to participate effectively.</li> <li>8. Proper feedback mechanisms put in place.</li> </ol> <p>These reports should also be published and publicize on the website of the relevant institution and hard copies of the same made available to the public.</p>
	<p>There are further inputs that need to be made when it comes to determining what entails meaningful and reasonable participation.</p>	<p>This provision should be amended to include that there should be:</p> <ol style="list-style-type: none"> <li>1. A clear guideline with a structure and process. Having clear rules that are set when defining how the process</li> </ol>
<p>Schedule 1 (2)</p> <p>In determining what is reasonable, the authority shall take into consideration the-</p> <ol style="list-style-type: none"> <li>a) Nature of legislation or decision to be made;</li> </ol>		



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<p>b) Importance of the legislation or decision; and</p> <p>c) The intensity of the impact of the legislation or decision on the public</p>		<p>should be conducted, the tools and how decisions are made.</p> <ol style="list-style-type: none"> <li>2. Access to information should be another clear guideline; citizens are entitled to public information.</li> <li>3. The commitment to process whether the responsible authorities are willing to obtain and consider public inputs.</li> <li>4. How well relevant stakeholders were reached and what their conditions may be for example persons with disabilities</li> <li>5. Integrity from the responsible authorities that they are credible, trustworthy and honest.</li> <li>6. Transparency that the information is shared widely and is provided for in a timely manner</li> </ol>
<p>Schedule 4 (1)</p> <p>The relevant institution shall give the public adequate notice to make their input on the issue.</p>	<p>There needs to be clarity on what exactly an adequate notice would be for the public to be able to respond well to the issue raised.</p>	<p>This provision should be amended to include a specific time. We recommend that the timeline should be at least <b>21 days' notice</b> to make their input on the issue.</p>
<p>Schedule 6 (1)</p> <p>Before undertaking public participation, the responsible authority shall develop a public participation programme.</p>	<p>The development of a public participation programme is important however it is also important for this problem to also be publicised.</p>	<p>This provision should be amended to include that the responsible authority shall develop and publicise a public participation programme.</p>

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<p>Schedule 8</p> <p>Every public participation forum shall be undertaken within a realistic timeframe for consultation, allowing reasonable period for each stage of the process.</p>	<p>There needs to be clear timelines for the responsible authority when conducting public participation forums.</p>	<p>This provision should be amended to include that every public participation forum shall be undertaken within 21 days.</p> <p>It should also be amended to include that the period of time may be extended by an additional 7 days to ensure that the consultation process will allow for full participation of citizens.</p>
<p>Schedule 10 (1) (b)</p> <p>Ensure that the documents are published and distributed in a language and form that can be used by the public.</p>	<p>There is need for clear timelines to be given. Not providing timelines leaves the process open ended and up to the discretion of the responsible authority.</p>	<p>This provision needs to be amended to include that it will be made available to the public within 21 days.</p> <p>Amend to include that a citizen version will be used that uses simple language to allow the citizen to understand and participate fully.</p>
<p>Schedule 10 (3) (b)</p> <p>May where the authority incurs expense in providing the information be subject to payment of a reasonable fee;</p>	<p>The word reasonable is not defined and may leave room for the amount to be up to the discretion of the responsible authority. Given that there is a citizen standard charter this should be what informs the fee.</p>	<p>This provision should be amended to include that it will be subject to the fee as per the citizen standard charter.</p>
<p>Schedule 10 (3) (c)</p> <p>May be subject to confidentiality requirements of the authority.</p>	<p>This information is already provided for in the access to information act. The act already provides for a comprehensive exclusion provision. Therefore, any exclusions should be guided by the act.</p>	<p>This provision should be amended to include that it will be subject to the access to information act 2016.</p>



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Schedule 10 (4) (a) The request is unreasonable in the circumstances;	This is unclear and will lead to public confusion. Who exactly is to determine what is unreasonable? How will unreasonable be defined?	This provision should be deleted.
Schedule 10 (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.	The access to information act is the principal law and this bill should conform to the limitations imposed by the access to information act 2016 not the bill itself.	This provision should be amended to indicate that it will be limited to the nature and extent specified under article 24 of the constitution and the access to information act 2016.
Schedule 13 (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.	The constitution of Kenya supersedes all other laws. The right to expression can only be limited by the constitution.	This provision should be amended to indicate that it will be limited to the nature and extent specified under article 24 of the constitution and article 33 of the constitution.

**The Public Participation Bill (National Assembly No.71 of 2019)**

Clause and provision of section in the Bill	Comments	Recommendations
Clause 5	<p>This provision does not encompass the sovereign power of the people of Kenya and ignores the powers of self-governance bestowed onto the citizens.</p> <p>The constitution of Kenya under the objects and principles of devolved government under Article</p>	This provision should be amended to include both article 1 and 174 of the constitution to holistically represent all the rights that citizens have in regard to participation in the decision-making process.

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<p>A state organ or public office shall in conducting public participation be guided by the following principles –</p> <ol style="list-style-type: none"> <li>The need to provide timely access to relevant information relating to public offices and state organs policy formulation and implementation;</li> <li>The national values and principles of governance as provided for under article 10 of the constitution;</li> <li>The values and principles of public service as set out under article 232 of the constitution;</li> <li>Principles of public finance as set out under article 201 of the constitution;</li> <li>Recognition and promotion of the role of non-state actors in the decision-making process;</li> <li>The values and principle of leadership and integrity under Chapter Six of the Constitution;</li> <li>Promotion of partnerships between public offices and state organs and the non-state organs in decision making processes; and</li> </ol>	<p>174 give powers of self-governance to the people and enhance their participation in the exercise of the powers of the state in making decisions that affect them while recognizing the powers of the communities to manage their own affairs and to further their own development.</p> <p>Article 1 of the Constitution states that all sovereign power belongs to the people of Kenya.</p>	<p>It also should be amended to include:</p> <ol style="list-style-type: none"> <li>A clear guideline with a structure and process. Having clear rules that are set when defining how the process should be conducted, the tools and how decisions are made.</li> <li>Access to information should be another clear guideline; citizens are entitled to public information.</li> <li>The commitment to process whether the responsible authorities are willing to obtain and consider public inputs.</li> <li>Transparency that the information is shared widely and is provided for in a timely manner</li> </ol>
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h) The participation of the women, youth and persons with disabilities in decision making processes.			
Clause 6 (e)  Ensure that clear and reasonable timelines are established for public involvement at every stage of decision making and inform the public on the timelines;	There should be a requirement on what exactly the clear and reasonable timeline is. Leaving it to the discretion of state organs and public offices will not allow for effective participation	This provision should be amended to include that the consultation document will be availed to the public 14 days prior to the public participation forum and submission of written memoranda.	
Clause 6 (g)  Enhance participation through civic education for purposes of creating an enlightened and empowered citizenry;	Civic education is important and as such there should be a minimum requirement on how much it should be conducted.	This provision should be amended to include that funding for civic education will be no less than 2%.	
Clause 6 (j)  Publish notices inviting the public to provide input on comments on a matter under deliberation in accordance with section 10;	There should be a requirement on where the notices will be published. It should be made available on the state organs and public offices website, newspapers, online and traditional media and radio.  It should also include a requirement on timelines for the published notices.	This provision should be amended to include where the published notices will be published, we recommend the state organs and public offices website, newspapers, online and traditional media and radio.  This provision should be amended to include that the notices will be availed to the public 21 days prior.	



<p>Clause 6 (k)</p> <p>Ensure that public input is analysed, and the decision made is communicated to the public including a summary of the input made and the reasons for the decisions within reasonable timelines;</p>	<p>The is lack of clarity around what is considered reasonable. There is need for clarification on what it means exactly. There is also need for specified timelines beyond 'reasonable'.</p>	<p>This provision should be amended to delete the phrase reasonable and instead provide a specified timeline of 21 days.</p>
<p>Clause 10 (2) (b)</p> <p>Publicise the resolutions of forum</p>	<p>There needs to be an indication of where the resolutions of the forum will be published. These documents should be made publicly available as per their right under article 35 of the access to information act 2016.</p>	<p>This provision should be amended to include that it will be posted on websites, online communication platforms, traditional media, public announcements (church, chief, barazas) radio and other forms of relevant communication.</p>







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21/11/19

Eva Okoth <eva@naturaljustice.org.za>

## Submission of Memorandum on the Public Participation Bill 2019

Rose Birgen <rose@naturaljustice.org>

Tue, Nov 19, 2019 at 4:52 PM

To: clerk@parliament.go.ke

Cc: Gino Cocchiaro <gino@naturaljustice.org>, Eva Okoth <eva@naturaljustice.org>

Dear Sir/ Madam,

We refer to the above matter.

Pursuant to Article 10(2) and Article 118 of the Constitution of Kenya 2010, we hereby attach our submission on the above-mentioned Bill.

Regards,



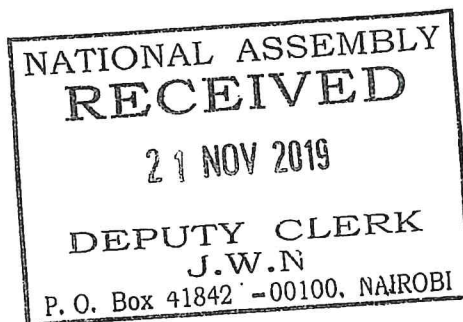
Rose J. Birgen

T +254 (0)725 538 678 | +254 (0)799 403 013

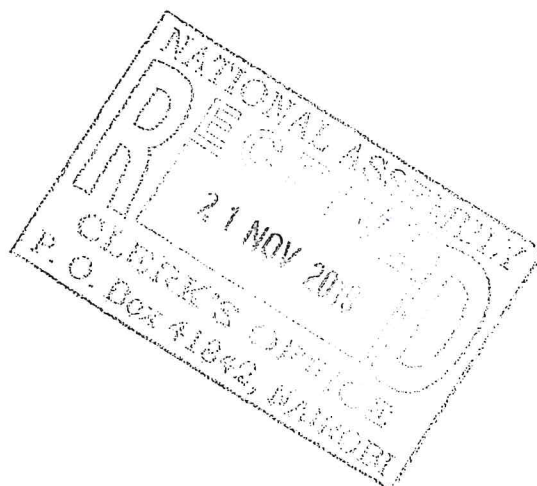
Skype: jeptoobirgen | Twitter: @JeptooBirgen

www.naturaljustice.org

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OUR REF: NJ/NA/PPB.2019/19/1

YOUR REF:

19.11.2019

The Clerk of the National Assembly  
P.O. Box 41842-00100

Advanced copy sent to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)

**NAIROBI**

Dear Sir/Madam,

**RE: SUBMISSION OF MEMORANDUM ON THE PUBLIC PARTICIPATION BILL, 2019.**

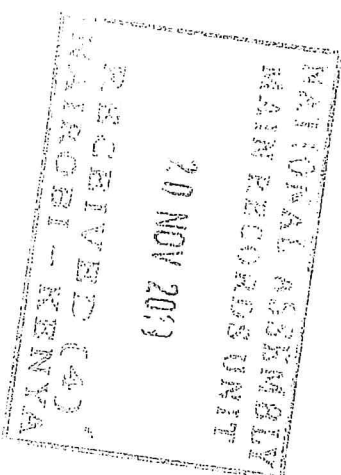
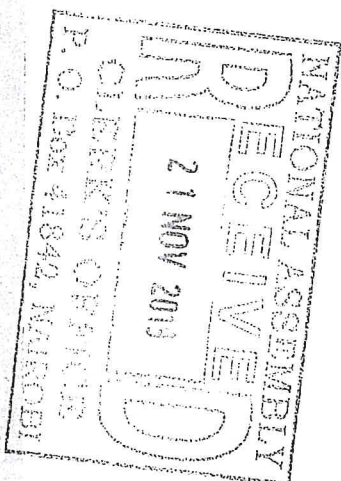
We refer to the above matter and the call for public participation recently.

Pursuant to Article 10(2) and Article 118 of the Constitution of Kenya 2010, we hereby tender our submission on the above-mentioned Bill.

Sincerely,

*[Handwritten signature]*

**Rose J. Birgen**  
[rose@naturaljustice.org](mailto:rose@naturaljustice.org)





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No.	Clause of the Bill	Sub-heading of the Bill	Proposed Changes	Rationale For Proposed Changes
1.	4	Object and purpose of the Act	The object and purpose of the Act is narrow. The framework should be broadened to include the following: <i>Identify the conditions required to make the participation process credible and to maximize interest and commitment from the stakeholders.</i>	Public participation is a critical social accountability mechanism. It enables citizens hold state institutions accountable and responsive to their needs. By their very nature, public participation implies that the public's contribution will influence a decision. Therefore strong emphasis should be placed on the adequate conditions for effective participation including transparency, accountability etc.
2.	5 (a)	Guiding principles in	This clause should be amended to	In order to facilitate effective public

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			<p>To comply with this Constitutional provision, the Bill should also include the minorities and marginalised groups so as to guarantee the protection of their interests.</p>
4.	6 (e)	<p>Obligations in conducting public participation</p>	<p>We strongly emphasize the need to establish and define reasonable timelines for public involvement.</p> <p>Public participation should be real. The yardstick for public participation is that a reasonable opportunity is given to the members of the public and all interested parties to know about the issue and to have an adequate say.</p> <p>In the case of <i>Coalition for Reform and Democracy (CORD) &amp; Another v Republic of Kenya &amp; Another</i> (Petition No. 628 &amp; 639 of 2014), the Bill was published on December 8, 2014 and the same was only made available to the public on 9 December 2014. The court held that meaningful public participation and engagement was rendered impossible, given the size of the Bill, the tight timelines for making submissions and the difficulty in accessing the Bill.</p>



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5.	6 (g)	<p>We propose that this sub-clause be amended by deleting the word "enhance" and replacing it with "facilitate effective". It should read as follows:</p> <p>(g) <del>enhance</del> <u>facilitate effective</u> public participation through civic education for purposes of crating an enlightened and empowered citizenry.</p>	<p>The term "enhance" is loose and relative. It is not measurable and can be subject to abuse.</p> <p>Further, it should be mandatory that civic education is conducted at different stages of public participation to build the capacity of citizens to participate. Civic education must always precede public participation.</p>
6.	6 (m)	<p>This clause should be amended to include "<b>accurate, complete</b>" access to information by the public on the subject matter under deliberation and the issues to be addressed.</p> <p>The clause should therefore read as follows:</p> <p>(m) Ensure <u>accurate, complete and</u> timely access to information by the public on the subject matter under deliberation and the issues to be addressed.</p>	<p>The public should be supported in their will to participate by providing relevant information that is accurate and complete, and in formats and mechanisms that are easy for all to access, understand and to use.</p>
7.	6 (k)	<p>We propose that this sub-clause is</p>	<p>Article 47 of the Constitution of Kenya</p>

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			<p>amended to provide for a reasonable timeline within which decisions are to be communicated to the general public.</p> <p>The clause should therefore read as follows:</p> <p>(k) ensure that public input is analysed and the decision made is communicated to the public including a summary of the input made and the reasons for the decisions within reasonable timelines <u>but not later than thirty (30) days from the date of the decision.</u></p>	<p>provides for a right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.</p> <p>This is a set of moral norms, values and principles aimed at protecting the citizenry.</p> <p>Prescribing timelines is important because it provides a measure to advance and defend this right.</p>
8.	7	Public participation by parliament	<p>We suggest that it be re-written to make clear the intent.</p>	<p>In our view, the wording of this clause is ambiguous and subject to many interpretations. It is unclear whether it enhances the participation of the public or whether it locks them out by giving their representatives the power to speak on their behalf and thereby creating an assumption that such views are a general representation of the constituents.</p>
9.	10 (2)	Public participation forum	<p>We recommend an addition of sub-clause (e) to require the secretary to</p>	<p>Clause 8 of the Public Participation Bill provides that a member of the public has a</p>



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		collate written submissions for onward transmission to the relevant state organ or public office	right to attend public participation and make presentations either orally or by way of written submission.  In order to maintain this consistency, the role of the secretary for the forum should include collating written submissions for onward transmission to the relevant state organ or public office.
10.	10 (3) (4) (c)	We recommend an addition of section (v) marginalised groups and minorities	To comply with the Constitutional provisions of Article 56, the Bill should also include the minorities and marginalised groups so as to guarantee the protection of their interests. Further, this is to ensure that there is consistency across the Bill.
11.	11 (1) (c)	Notification of public participation fora  We recommend that Clause 11(c) be deleted.	Clause 11(c) refers to mechanisms for dissemination of information referred to under section 12. However, section 12 (or otherwise referred to as clause 12 is titled "affirmative action programmes" therefore has nothing whatsoever to do with the



			notification.
12.	11 (1)		<p>We recommend an additional sub-clause to provide for “the Kenya Gazette” as the other mechanisms for notification of public participation.</p> <p>The Kenya Gazette is the official channel of communication by the government. Besides publishing notices of new legislation and notices required to be published by law or policy, it also publishes announcements for general public information.</p>



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**MEMORANDUM OF SAUTI YA WANJIKU ORGANIZATION**  
**ON THE PUBLIC PARTICIPATION NATIONAL ASSEMBLY**

**BILL NO.69 OF 2019.**

**DATE: 28/11/2019**

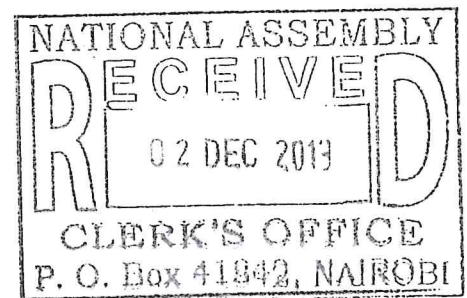
**TO:**

**THE CLERK OF THE  
NATIONAL ASSEMBLY  
PARLIAMENT BUILDINGS.**

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**FROM:**

**THE CHAIRMAN  
SAUTI YA WANJIKU ORGANIZATION  
NAIROBI - KENYA.**



**SUBJECT MATTER:**

**PUBLIC PARTICIPATION BILL NO. 69 OF 2019.**

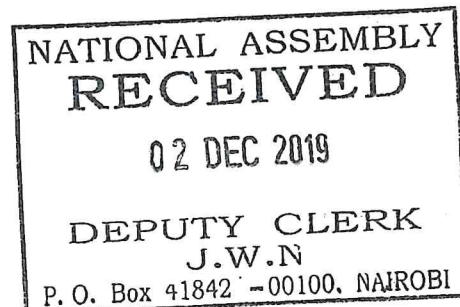
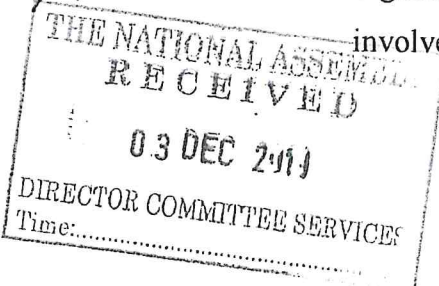
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**INTRODUCTION:**

Pursuant to the provision of Article 118(1)(b) of the constitution and the standing order 127(3) and further to the general interest of the citizenry over the BILL in question, we as members of the larger SAUTI YA WANJIKU ORGANISATION hereby react as follows:-

**REACTION:-**

1. Refer to page 1098/1099 clause 4(e) add it to read,,, (promote community ownership of public decisions through the local grassroot leadership.)
2. Refer to page 1099 clause 5(a) add to read,,, (the public communities and organizations to be affected by the decision shall have a right to be involved in the decision making process from the very initial stage.)



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3. Refer to page 1106 clause 2 add to read,,, a person may request for information relating to the issue under consideration **from the relevant office in advance.**
4. Refer to page 1106 clause 3(b). All information from government offices should be **released freely if it entails interrogating projects.**

#### **FURTHER REACTION:-**

Public participation is a core element of democratic governance devolved system. It is further embedded in the constitution with the sole responsibility of its operation upon the two levels of the governance .i.e. National and County. Public participation is crucial in ensuring the protection of rights, transparency, accountability, equity, self-determination influencing decision making, affective democratic citizenship and a meaningful dialogue. Freedom of information is the cornerstone to good and steady governance, meaningful participation and efficiency enhancing transparency. Therefore sustainable democracy depending on a knowledgeable citizenry whose access to a range of information enables it to participate more fully in public life, helps to determine priorities for public spending, equal access to justice and holds its public officials accountable, thus becomes responsive to the social development needs of the entire population.

The sovereign power of the people is exercised at the national and county levels in accordance with Article 1(4) of the constitution. As such the people have a huge role to play in devolved governance thus confirming that the principle of public participation is a key pillar of the constitution.

In view of the above reaction we hereby recommend the following issues / inputs to be factored in the proposed BILL.

#### **RECOMMENDATIONS:-**

1. This concept of public participation BILL should be rolled out down to the 47 County Assemblies for its appropriate implementation.



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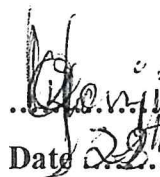
2. Quoting Article 10(2) a, b and c, the national values and principles of governance includes democracy and participation and accountability and more so a respect to the freedom of expression of all participants.
3. The need to the timely access to information and reasonable access to planning and policy making process.
4. The need for a humble time for advertisement say at least fourteen days in the popular media house and a most conducive venue for the meeting.
5. Public participation should be mandatory for effective engagement by both parties.
6. It is noted worldwide that public participation is generally a costly affair both financially and morally in terms of time covered by the attendants. We recommend an appropriate budget for each meeting with an estimated attendance of at least one hundred people as a quorum.
7. Yes there is always a budget for all key meetings at both the NATIONAL & COUNTY levels of governance. Now we are recommending a full-fledged budget for every important meeting involving the public (Wanjiku). These budgets should mandatorily cover WANJIKU'S logistics norms .i.e. a cup of tea/soda and at least some transport to and from the venue of the meetings by all available means.
8. The number seven above settles down to calling for the financial support for public participation in all meetings.

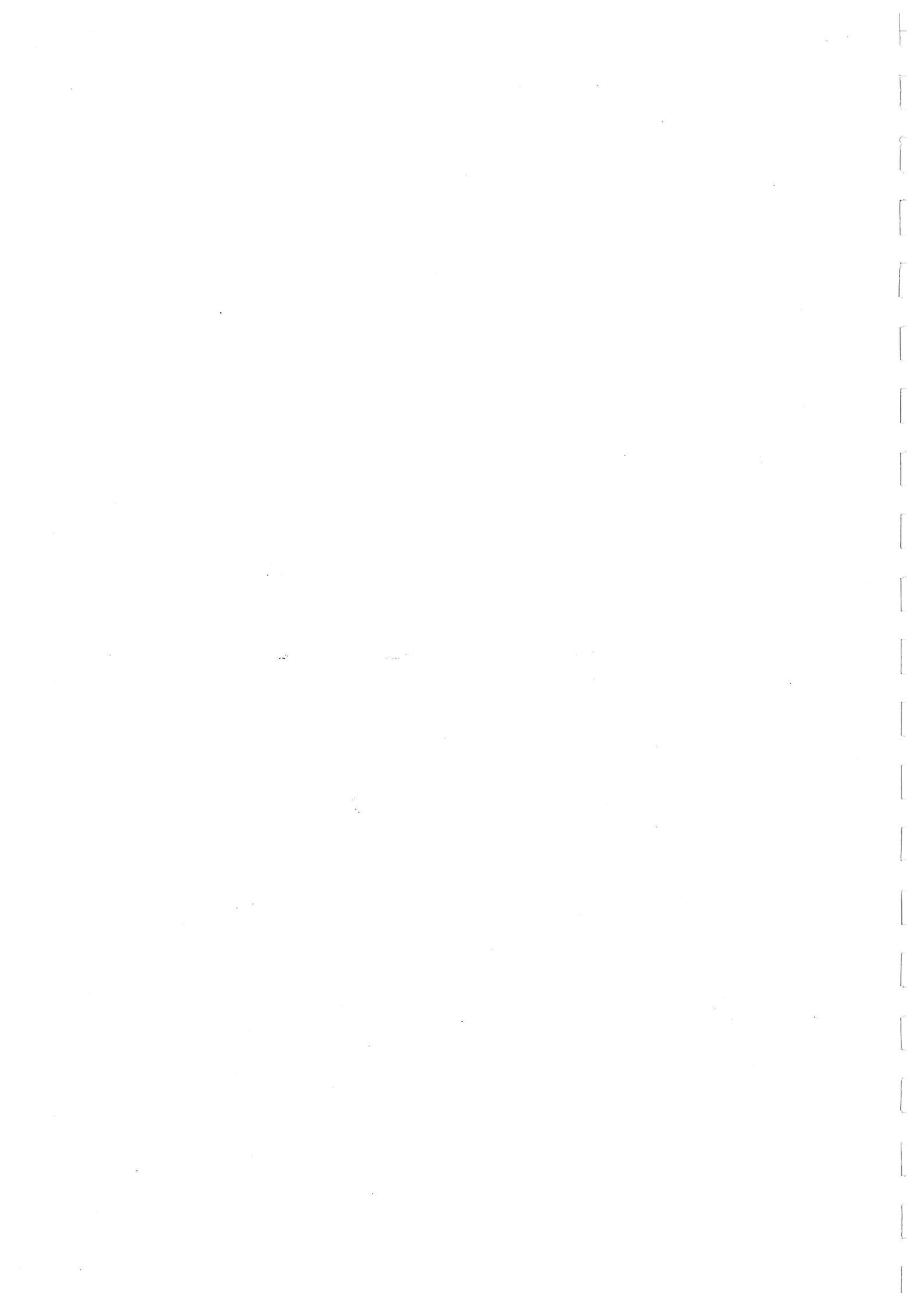
In conclusion we members of **SAUTI YA WANJIKU** calls for openness in handling this BILL deemed as very sensitive. A continuous **CIVIC EDUCATION** should include the importance of public participation all through. A clear spirit of democracy and constitutionalism should reign the two levels of governance for a true process of implementation.

MAY THE ALMIGHTY GOD BLESS KENYA.

**SIGNED BY:-**

1. Mr. George Mungau Okonji  
Chairman  
0713 968 763

  
Date 28th Nov 2019



(2) -KIOKO  
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## COUNCIL OF GOVERNORS

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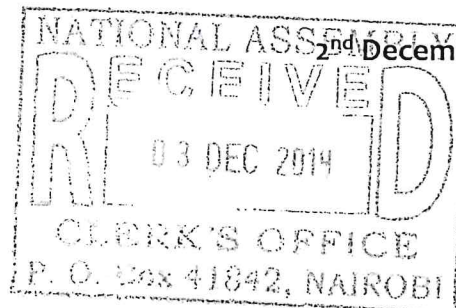
4/12/19

Westlands Delta House 2<sup>nd</sup> Floor, Waiyaki Way.  
P.O. BOX 40401 -00100,  
Nairobi.

Tel : (020) 2403314, 2403313  
+254 729 777 281  
E-mail: info@cog.go.ke

Our ref: COG/6/11 VOL 2 (44)

Mr. Michael Sialai  
Clerk of the National Assembly  
Parliament Buildings  
**NAIROBI**



2<sup>nd</sup> December, 2019

Dear

Mr. Sialai;

### LEGISLATIVE MEMORANDA ON THE PUBLIC PARTICIPATION BILLS

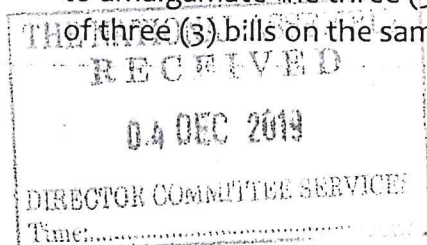
We refer to the above matter and further your call for submissions on the Public Participation Bills Number 69 and 71 respectively.

The Council of Governors appreciates that in realizing the objects of devolution, the principles of consultation and cooperation under Article 6(2) and Article 189 of the Constitution are inevitable.

Based on these principles, the Council of Governors has reviewed the two Bills and would like to forward for your consideration the following legislative memorandum attached herewith.

However, we further wish to bring to your attention the following for your consideration:

- i. There is already a draft Public Participation Policy that has been tabled before the Cabinet. Good practice dictates that a policy precedes legislation and thus the Council recommends the House await adoption of the policy before discussing the bills and align the bills to the policy.
- ii. Senate passed the Public Participation Bill No. of 4 of 2018 and forwarded it to the National Assembly for consideration. In essence, there are now 3 Bills in the national assembly. The three (3) bills are similar and there is a need for Parliament to amalgamate the three (3) for smooth implementation of the law. The existence of three (3) bills on the same subject matter will cause confusion in the sector.



(3) Lorna  
For Analysis  
KIOKO  
21/12/2020



- iii. Both the senate Public Participation Bill No. of 4 of 2018 and the Public Participation Bill (National Assembly Bill No. 69 (recommend making regulations for better carrying into effect the provisions of the acts. This will continue to cause further confusion in the sector if the regulations are different

Please be assured of our highest esteem and consideration.

Yours

A handwritten signature in black ink, appearing to read 'Sincerely' followed by a stylized signature.

Jacqueline Mogeni MBS  
Chief Executive Officer

**Copy:**

1. All Excellency Governors
2. All County Attorneys



**COUNCIL OF GOVERNORS**

**LEGISLATIVE MEMORANDUM TO THE NATIONAL ASSEMBLY  
PARLIAMENTARY BROADCASTING AND LIBRARY COMMITTEE ON THE PUBLIC  
PARTICIPATION BILL (NATIONAL ASSEMBLY BIILL NO. 69)**

**FROM**

**THE COUNCIL OF GOVERNORS**

**13<sup>TH</sup> NOVEMBER, 2019**

**MEMORANDUM ON THE PUBLIC PARTICIPATION BILL (NATIONAL ASSEMBLY BIILL NO. 69)**

**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 the existing County public participation guidelines 2016 and the need to align the draft National Legislation with the same including the Constitution of Kenya, 2010, the County Governments Act 2012, Public Finance Management Act 2015, Existing enacted Thirty Four (34) county

public participation Acts, Standing orders, the Kenyan policy and framework on public participation spearheaded by the Attorney General among others.

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.

Having reviewed the Public Participation Bill (National Assembly Bill No. 69) in its entirety, the Council of Governors supports the Bill entrenching public participation into national legislation, a position which was included while enacting Article 184 (1) of the Constitution of Kenya, 2010.

Notwithstanding the above, the Council proposes the following amendments to ensure that the Bill is better implemented

#### **A. General Comments**

Thirty Four (34) of the Forty Seven (47) County Governments have already enacted County Public Participation Acts. As such, the Council proposes that the proposed Bill should take these Acts into consideration and should County laws be obliged to align to the proposed Bill, then there should be a transition clause to give them time to align to the Bill.

#### **B. Comments on specific provisions**

Section of the Bill	Provision of Section in the Bill	Proposed Amendment	Rationale/Justification for Amendment
5 Guiding principles	The conduct of public participation shall be guided by the following principles  (g) that public views shall be taken into consideration in decision making;	<b><i>Amend to read as follows;</i></b>  (g) that public views may be taken into consideration in decision making	The threshold set in <i>Republic v County Government of Kiambu Ex parte Robert Gakuru &amp; another [2016] eKLR</i> the Court held that public participation "...the mere fact that particular views during public participation have not been incorporated in the enactment (legislation) does not justify the court in invalidating the enactment in question. Therefore the public's views may be considered in decision making.
Section 10 Publication of specific public participation guidelines	Each responsible authority shall publish the specific guidelines on public participation developed pursuant to section 9(1) in the	<b><i>Amend to read as follows;</i></b>  Each responsible authority shall publish the specific guidelines on public participation	The timeline given is too short and it would not be possible to deliver the guidelines within the stipulated time.

	Gazette within three months of the commencement of this Act.	developed pursuant to section 9(1) in the Gazette within six months of the commencement of this Act.	
Clause 12 (4): Reports	<p>(4) The annual report shall contain</p> <ul style="list-style-type: none"> <li>-a description of the activities and outcomes of public participation;</li> <li>-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;</li> <li>-and any other information that the responsible authority may consider relevant.</li> </ul>	<p><i>Amend in paragraphs by inserting the following additional paragraphs after paragraph (b)</i></p> <p>(a) a description of the activities and outcomes of public participation;</p> <p>(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</p> <p>(c) Introduction that provides an overview of the structures established in the responsible authority to facilitate public participation including how information is communicated, inputs received and feedback processed.</p> <p>(d) How have the issues raised in the previous report by the National Assembly been addressed in the year under review?</p> <p>(e) Details of the number of people that have been engaged in what processes</p>	<p>The council is in support of this insertion as it reflects the model format of what kind of information the responsible authority report on public participation should contain as provided by the County Public Participation Guidelines, 2016</p>



		<p>and at what level (National, County, sub-County, ward and village)?</p> <p>(f)How the principles of public participation (Section of the proposed Public Participation Bill, 2016) have been inculcated in the respective authority's processes:</p> <ul style="list-style-type: none"> <li>• What kind of information is availed to the public and is it released in a timely manner? Are there challenges with provision of information in any form, hard, electronic, Braille or audio forms?</li> <li>• How accessible to the public is the process of formulating and implementing policies, laws, and regulations including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards?</li> <li>• What measures has the responsible authority put in place</li> </ul>	
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		<p>to protect and promote the interest and rights of minorities, marginalized groups and communities and have their access to relevant information been protected and promoted?</p> <ul style="list-style-type: none"> <li>• What opportunities for public participation has the respective authority established?</li> <li>• How has the legal standing of interested or affected persons, organization, and where pertinent, community to appeal from or, review decision or redress grievances with particular emphasis on persons and traditionally marginalized communities, including women, youth, and disadvantaged communities been provided for?</li> <li>• What opportunities have been accorded to the roles and obligations of the respective authority</li> </ul>	
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		<p>and non-state actors in decision making processes and partnership? And as complementary authority and oversight been provided for?</p> <ul style="list-style-type: none"> <li>• How has promotion of Public-Private Partnerships (PPPs), such as joint committees, technical teams and citizen commissions to encourage direct dialogue and concerted action on sustainable development been facilitated in the responsible authority?</li> <li>• How has the reciprocal roles of non-state actor's participation and governmental facilitation and oversight been recognized and promoted?</li> </ul> <p>(g) What efforts has the responsible authority made to train both its officers and the public to participate effectively?</p> <p>(h) A review of mechanisms of redress and</p>	
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		<p>grievances that have been put in place.</p> <p>(i) What are the key challenges that the responsible authority has faced in facilitating effective public engagement? And what mitigation has been sought?</p> <p>(j) Proposals to the County or National Assembly on what further actions such as amendments to the law and policies are needed to make public participation effective.</p> <p>(k) any other information, that the responsible authority may consider relevant</p>	
<p>Clause 12 (5) Reports</p>	<p>The responsible authority shall cause the annual report to be published and publicized in such other manner as the responsible authority may determine.</p>	<p><b><i>Amend to replace ‘may determine’</i></b></p> <p>The responsible authority shall cause the annual report to be published and publicized in the most effective medium of communication in terms of reach and cost. Such mediums may include:</p> <p>Television;</p> <ul style="list-style-type: none"> <li>• Brochures;</li> <li>• Newsletters;</li> <li>• Information communication technology;</li> <li>• Mass mailing;</li> <li>• Websites;</li> </ul>	<p>Strategic communication is critical and should be incorporated in all policy and developmental agendas. In further recognition of the existing County public participation guidelines 2016 which are already guiding public participation in the counties and the need to align the draft National Legislation with the same</p>

		<ul style="list-style-type: none"> <li>• Social media (Facebook, Twitter, LinkedIn, Instagram etc.);</li> <li>• Community radio stations;</li> <li>• Public meetings;</li> <li>• Traditional media; and</li> <li>• Notices in offices, places of worships, markets, schools, libraries, social clubs, medical facilities and county government offices.</li> </ul>	
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## General Public Participation Guidelines

<p><b>Schedule 1</b></p> <p><b>Opportunities for public participation</b></p>	<p>1 (1) The responsible authority shall provide reasonable and meaningful opportunities for public participation.</p> <p>(2) In determining what is reasonable, the authority shall take into consideration the-</p> <p>(a) nature of legislation or decision to be made; (b) importance of the legislation or decision; and</p> <p>(c) the intensity of the impact of the legislation or decision on the public.</p>	<p><b><i>Amend section 1 to include 1(3) by inserting the words</i></b></p> <p>(3) in determining what is meaningful, the authority shall take into consideration</p> <ul style="list-style-type: none"> <li>• <i>Clarity of the subject matter:</i> It is important to establish realistic and practical goals that have been accepted by all stakeholders to mitigate the public's expectations. Making promises that cannot be kept will undermine public confidence in the citizen participation process.</li> <li>• <i>Clear structure and process:</i> Before public participation takes place, clear rules need to be set defining the conduct of the process, tools to be used and how final decisions will be reached.</li> <li>• <i>Access to information:</i> Duty bearers should provide information in acceptable, easy to use formats.</li> </ul> <p><i>Opportunity for balanced influence:</i> The engagement rules should ensure a balance of opinion and avoid dominance or bias by a section of the public.</p> <ul style="list-style-type: none"> <li>• <i>Commitment to the process:</i> Proponents of public</li> </ul>	<p>The council is in support of this insertion as it allows for uniformity of standards, policies and methodologies across the 47 county 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, 2016.</p>
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		<p>participation must be willing to obtain and consider public input in decision making and to ensuring that public participation works.</p> <ul style="list-style-type: none"> <li>• <i>Inclusive and effective representation:</i> Mechanisms must be established to reach out to all relevant stakeholders.</li> <li>• <i>A climate of integrity:</i> For the public to fully participate, government agencies and decision makers must be credible, honest and trustworthy.</li> <li>• <i>A belief in the value of public input:</i> Public input should result in better decision-making and better governance</li> <li>• <i>Capacity to engage:</i> Ensuring that agencies know how to design and implement public participation processes. Both the agencies and the public should have the knowledge and communication skills required to participate effectively in the process.</li> </ul>	
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		<ul style="list-style-type: none"> <li>• <i>Complete transparency:</i> The timely sharing of easily understandable and accessible information to educate the public about the issues and options.</li> <li>• <i>Bear in mind standing conditions of the participants:</i> It is critical that facilitators understand their audience well. They should clearly discern the; social and economic status, religious beliefs, ethnicity, and clan of those engaging in public participation. Knowledge levels, incomes and power wielded will influence the deliberations and ultimately have a bearing on the conclusion and subsequent outcomes</li> </ul>	
<b>Schedule 2</b> <b>Public Awareness</b>	2) The responsible authority shall facilitate continuing education on public engagement activities and techniques.	<p><b><i>Sentence too ambiguous. Delete this and insert basis for civic education</i></b></p> <p>‘The responsible authority shall facilitate effective civic education programme which shall be steered by the national civic education guidelines and curriculum’</p>	Sentence too ambiguous. All responsible authorities should have an effective civic education programme which should take place regularly alongside or independent of public participation
<b>Schedule 4(1)</b> <b>Notices</b>	4. (1) The relevant institution shall give the public adequate notice to make their on their input	<p><b><i>Amend to specify time;</i></b></p> <p>4(1) The relevant institution shall give the public a <b>21 days’</b></p>	To provide for clarity on the timeline required for an adequate notice to the public.

		<p><b>notice</b> to make their input on the issue</p> <p>4(2) That withstanding, the responsible authority may determine, and justify to the public, through the nature and importance of the legislation or decision, to reduce the notice time</p>	
<b>Schedule 4(2) Notices</b>	<p>(2) For purposes of paragraph (1), the responsible authority shall establish mechanism to enable the widest reach which may include-</p> <ul style="list-style-type: none"> <li>-television stations;</li> <li>-information communication technology centres;</li> <li>-websites;</li> <li>-community radio stations;</li> <li>-public meetings; and</li> <li>-traditional media.</li> </ul>	<p><b><i>Amend and insert</i></b></p> <p>...the responsible authority shall establish the <b>most effective mechanism</b> to communicate in <b>terms of cost and reach</b>. Such mediums may include-</p> <ul style="list-style-type: none"> <li>-television stations;</li> <li>-information communication technology centres;</li> <li>-websites;</li> <li>-community radio stations;</li> <li>-public meetings; and</li> <li>-traditional media.</li> </ul>	<p>The sentence was too confining. Strategic communication is critical and should be incorporated in all policy and developmental agenda. In further recognition of the existing County public participation guidelines 2016 which are already guiding public participation in the counties and the need to align the draft National Legislation with the same</p>
<b>Schedule 6(1) Consultation Framework</b>	<p>Before undertaking public participation, the responsible authority shall develop a public participation programme</p>	<p><b><i>Amend to read;</i></b></p> <p>Before undertaking public participation, the responsible authority shall develop and <b>publicise</b> a public participation programme</p>	<p>It is not only important to develop the programme but there is need to publicise the programme in order for all concerned stakeholders to be aware of where they can input.</p>
<b>Schedule 8 Timeframe for public participation</b>	<p>Every public participation forum shall be undertaken within a realistic timeframe for consultation, allowing reasonable period for each stage of the process.</p>	<p><b><i>Amend and insert to read;</i></b></p> <p>8(1) Every public participation forum shall be undertaken within <b>21 days, upon the expiry of the notice given under guideline 4(1).</b></p>	<p>This is to ensure that there is clarity of timelines on the side of the responsible authority in terms of conducting the public participation forum.</p>

		8(2) The responsible authority may extend the period provided for in guideline 8(3) to ensure that all stages of the consultation process are completed.	
<b>Schedule 10</b> <b>Access to</b> <b>information for</b> <b>public</b> <b>participation</b>	10. (1) The responsible authority shall - (a) publish and distribute the documents for public consideration as widely as possible, including but not limited to providing hard copies, television, advertisements, websites, community radio announcements or traditional media;	<b>Amend to include the words 'and made available to the public 14 days before public participation forum'</b>  To read  10 (1) (a) publish and distribute the documents for public consideration as widely as possible and made available to the public 14 days before public participation forum, including but not limited to providing hard copies, television, advertisements, websites, community radio announcements or traditional media; (b) That withstanding, the responsible authority may determine and justify to the public, through the nature and importance of the legislation or decision, to reduce the publication and distribution time	Communication timelines are crucial to ensure that there is ample time to process the information, prepare for engagement and act accordingly. This is the ideal timeline proposed in the County Public Participation Guidelines, 2016



<b>Schedule 10 (3) b) Access to information for public participation</b>	10 (3) A person may request for information relating to an issue under consideration. (b) may, where the authority incurs expenses in providing the information, be subject to payment of a reasonable fee	<b><i>Insert words and amend to read;</i></b>  10 (3) A person may request for information relating to an issue under consideration. (c) May, where the authority incurs expenses in providing the information, be subject to payment of a reasonable fee <b>as per the published citizen service charter</b>	The Service Delivery charters will standardize the fee payments in order to eliminate corruption.
<b>Schedule 10 (3)(c)</b>	10 (3) A person may request for information relating to an issue under consideration. (C) may be subject to confidentiality requirement of the authority	<b><i>Insert and Ament to read;</i></b>  10 (3)(c) A person may request for information relating to an issue under consideration. (C) may be subject to confidentiality requirement of the authority <b>subject to the Access to Information Act of 2016</b>	The access to information act provides a comprehensive exclusion provisions hence all exclusions imposed by the authority should confer to it
<b>Schedule 10(4)</b>	10 (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; (b) or the applicant fails to satisfy any confidentiality requirements imposed by the responsible authority.	<b><i>Delete section 10 (4) (a) and retain (b) to read</i></b>  10 (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 applicant fails to satisfy any confidentiality requirements imposed	The section is ambiguous and who determines what is 'unreasonable'? this will lead to confusion in limiting information to the public

		by the responsible authority.	
<b>Schedule 10 (5)</b>	The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section	<i>Delete words and amend to read;</i>  The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under the Access to Information Act 2016	The access to information act supersedes any limitations imposed by this act hence should conform to the limitations imposed by the Access to Information Act, 2016 and not the bill itself
<b>Schedule 13 (3) on conduct of public participation processes</b>	A persons freedom of expression under Article 33 of the Constitution shall be limited to the nature and extent specified under this section	<i>Delete words and Amend to read as follows;</i>  A persons freedom of expression under this section shall be limited by Article 33 of the Constitution	The Constitution of Kenya supersedes all other laws and hence a Kenyans right to expression can only be limited by th Constitution of Kenya

**C. Recommendations:**

1. The National Assembly amalgamates the\_Public Participation Bill (National Assembly Bill No. 69) and the Public Participation Bill (National Assembly Bill No. 71) into one comprehensive bill as the objectives of both Bills are similar.
2. There is already a draft Public Participation Policy that has been tabled before the Cabinet. Good practice dictates that policy precedes legislation and thus the Council recommends the House to align the Bill to the Policy.
3. The Bill ought to consider and provide for Monitoring and Evaluation of public participation, feedback and reporting as well as complaints and redress mechanisms.

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**COUNCIL OF GOVERNORS**

**LEGISLATIVE MEMORANDUM TO THE NATIONAL ASSEMBLY JUSTICE AND  
LEGAL AFFAIRS COMMITTEE ON THE PUBLIC PARTICIPATION BILL (NATIONAL  
ASSEMBLY BILL NO. 71)**

**FROM**

**THE COUNCIL OF GOVERNORS**

**13<sup>TH</sup> NOVEMBER, 2019**

## **MEMORANDUM ON THE PUBLIC PARTICIPATION BILL (NATIONAL ASSEMBLY BILL NO. 71)**

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 (National Assembly Bill No. 71)

### **A. General Comments**

Thirty Four (34) of the Forty Seven (47) County Governments have already enacted County Public Participation Acts. As such, the Council proposes that the proposed Bill should take these Acts into consideration and should County laws be obliged to align to the proposed Bill, then there should be a transition clause to give them time to align to 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	(g) AN ACT of Parliament to give effect to Article 10(2) (a), 69(1) (d), 118, 174 (c), 184 (1) (c), 196 (1)(b), 201(a) and 232 (1) (d) of the Constitution regarding public participation;	<b><i>Amend to read as follows;</i></b> AN ACT of Parliament to give effect to Article 10(2) (a), <del>69(1) (d), 118, 174 (c), 184 (1) (c), 196 (1)(b), 201(a)</del> and 232 (1) (d) of the Constitution regarding public participation	Remove Article 69(1) which speaks about 'encourage public participation in the management, protection and conservation of the environment' and Article 184 (1) (c) which speaks about 'providing for participation by residents in governance of urban areas or cities' from the long title as nothing in the bill provides for any of these  Or  Retain Article 69(1) and include provisions of participation as



			<p>elaborated in the Environment Action Plan in the EMCA, 2015</p> <p>Retain Article 184 (1) (c) and include provisions of participation as elaborated in the Urban Areas and Cities Act</p>
<p><b>Part III</b></p> <p><b>Memorandum of Objects and Reasons</b></p>	<p>...Clause 12 provides for various communication mechanisms that may be used to disseminate information...</p>	<p><b>Clause 12</b></p>	<p>There is no clause 12. This should be inserted in the bill to read;</p> <p>publish and publiciz in the most effective medium of communication in terms of reach and cost. Such mediums may include:</p> <p>Television;</p> <ul style="list-style-type: none"> <li>• Brochures;</li> <li>• Newsletters;</li> <li>• Information communication technology;</li> <li>• Mass mailing;</li> <li>• Websites;</li> <li>• Social media (Facebook, Twitter, LinkedIn, Instagram etc.);</li> <li>• Community radio stations;</li> <li>• Public meetings;</li> <li>• Traditional media; and</li> <li>• Notices in offices, places of worships, markets, schools, libraries, social clubs, medical facilities and county government offices.</li> </ul> <p>Amend to read as follows;</p>

**C. Recommendations:**

1. The National Assembly amalgamates the Public Participation Bill (National Assembly Bill No. 71) and the Public Participation Bill (National Assembly Bill No. 69) into one comprehensive bill as the objectives of both Bills are similar.

2. There is already a draft Public Participation Policy that has been tabled before the Cabinet. Good practice dictates that policy precedes legislation and thus the Council recommends the House to align the Bill to the Policy.
3. The Bill ought to consider and provide for Monitoring and Evaluation of public participation, feedback and reporting as well as complaints and redress mechanisms.