

FACTSHEET

14



PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

Public Participation in the Legislative Process

2nd Edition

Factsheet No. 14

PUBLIC PARTICIPATION IN THE LEGISLATIVE PROCESS

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The Clerk of the National Assembly
Parliament Buildings
Parliament Road
P.O. Box 41842-00100
Nairobi, Kenya

Tel: +254 20 221291, 2848000
Email: nationalassembly@parliament.go.ke
www.parliament.go.ke

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Prepared by:

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Purpose and Acknowledgement

This Factsheet is part of the Kenya National Assembly Factsheets Series that has been developed to enhance public understanding and awareness, and to build knowledge on the work of the Assembly, and its operations. It is intended to serve as a guide for ready reference by Members of Parliament, staff and the public. The information contained here is not exhaustive and readers are advised to refer to the original sources for further information.

This work is a product of the concerted effort of all the Directorates and Departments of the National Assembly and the Parliamentary Joint Services. Special thanks go to the members of the *National Assembly Taskforce on Factsheets, Speaker's Rulings and Guidelines*, namely, Mr. Kipkemoi arap Kirui (Team Leader), Mr. Rana Tiampati, Mr. Kennedy Malinda, Ms. Anna Musandu, Mr. Samuel Kalama, Mr. Salem Lorot, Ms. Fiona Musili, Mr. Benson Inzofu, Ms. Laureen Wesonga, Ms. Anne Shibuko, Mr. James Maina Macharia, Mr. Morrice Shilungu, Mr. Finlay Muriuki, Ms. Rabeca Munyao and Mr. Stephen Omunzi.

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Public Participation in the Legislative Process



A member of the public giving views in a public participation forum

Introduction

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

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

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

Public participation in the legislative activities of Parliament is a fundamental constitutional principle. This factsheet is aimed at assisting in the preparation and understanding of public participation in the legislative process and in particular in the National Assembly. It sets out what public participation is within the provisions of Articles 1, 10, 35, 118, 119, 124, 201, 221, and 232 of the Constitution of Kenya, the Petitions to Parliament (Procedure) Act, No. 22 of 2012 and the National Assembly Standing Orders.

Public participation has many benefits some of which are: citizen empowerment; the generation of new, diverse and innovative ideas and actions; enhancement of citizen government relations; legitimization of government programs, appropriate prioritization of projects; improved delivery of public services and; governments responsiveness.²

The importance of public participation is captured in Article 118 of the Constitution, which mandates Parliament to *‘facilitate public participation and involvement in the legislative and other business of Parliament and its committees’*. Citizen involvement in policy-making and implementation strengthens and deepens good governance.

International and regional agreements, which Kenya is a signatory to, in public participation are spurring government to take steps to improve transparency, participation, and accountability. At the 1992 Earth Summit in Rio, nations from around the world, Kenya included, adopted Principle 10 of the Rio Declaration, which emphasizes the importance of public access to information and participation in decision-making processes.³

Furthermore, in Agenda 21, the plan of action that accompanied the Rio Declaration, governments pledged themselves to the pursuit of broader public participation in decision-making processes and policy formulation for sustainable development. The Manila Declaration (1982) and African Charter for Popular Participation in Development and Transformation (1990) are further examples of the trend towards enhancing public participation.⁴

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

3 South African Legislative Sector, Public Participation Framework, 2013

4 *Ibid*, 4



The Speaker of the National Assembly Hon. Justin Muturi (2013-2022) with Members of the Kenya Parliamentary Journalists Association (KPJA), during a past engagement forum. The Media forms part of the stakeholders that collaborate closely with Parliament.

I. Overview of Public Participation

(a) What is public participation?

Participation can be viewed as the process of interaction between an organisation and the public with an aim of making an acceptable and better decision. The process involves informing and listening, dialogue, debate and analysis, and implementation of agreed solutions.

(b) Who should participate?

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

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

- a) **Sovereign power** which belongs to the people and can be exercised either directly through citizen participation or indirectly through democratically elected leaders.⁵
- b) **National values and principles of governance** include public participation as underscored in Article 10 of the Constitution.
- c) **Right to participate in decision-making** is guaranteed specifically under Articles 118(1) (b) and 196(1) (b) of the Constitution and directs the national and county legislatures to respectively “*facilitate public participation*” in their work. This underscores the fact that the election of representatives does not negate the need for people to continuously be involved in governance processes.

To this extent, members of the public are invited to submit written memoranda on various aspects of parliamentary business. Additionally, Parliament proceedings are open to the public through live streaming on channels such as YouTube.

- d) **Right to petition Parliament** is underscored in Article 119 of the Constitution, the Petition to Parliament (Procedure) Act, No. 22 of 2012 and the National Assembly Standing Orders provide the public with the right to request Parliament to consider any matter within its authority.
- e) **Equality** - Article 27 of the Constitution guarantees equal participation in decision making processes including the legislative activities of Parliament.
- f) **Freedom of Expression** - the freedom of expression including the freedom to seek, receive or impart information or ideas including during public participation processes is guaranteed under Article 33 of the Constitution of Kenya.

- g) **Right to access information** - Article 35 of the Constitution as well as the Access to Information Act, No. 31 of 2016 guarantee every citizen the right to access information held by the State.

III. General themes in public participation

(a) Public Participation in Law Making

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

When a Bill has been introduced in the House and upon referral to the relevant committee, the committee places adverts in the Media requesting for public views. The Committee takes into consideration the views of the public while considering the Bill and preparing its report.

(b) Public participation in financial matters

The public finance framework under Articles 201, 221, and 232 of the Constitution requires that public participation be integrated in the consideration of financial matters. This is expounded in the Public Finance Management Act, 2012 and the National Assembly Standing Orders.

Members of the public can therefore make submissions or attend public hearings to give their views on financial matters.

(c) Public participation in oversight

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

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



IV. Tools for public participation

The public can engage the Legislature and give its views orally or in writing through:-

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



Members of the public engage in a parliamentary public participation forum

V. Organising public participation

(a) Steps in organising public participation

1



Creating awareness

Placing adverts in mainstream media, both print and electronic. This helps in generating awareness and increases citizen interest to participate and give views.

2



Involvement

Identify the key stakeholders or interested groups including those directly affected and those that can offer solutions.

3



Contacting the public

Communicate to the stakeholders through writing and inviting them for meetings and requesting submission of documents or memoranda.

4



Meetings

Hold meetings to get views including field visits.

5



Feedback mechanism

Through drafting and tabling of the resultant report.

(b) Public Participation Session

When conducting the actual public participation sessions, the action plan must be effectively carried out for accountability purposes. The stakeholders should be provided with the necessary information so as to enhance credibility. Witnesses are invited in time and allowed sufficient time to prepare their oral or written submissions.

(c) Exclusion of the public and the Media in exceptional circumstances

In exceptional circumstances, in-camera sessions can be held within the confines of Article 118 (2) of the Constitution. The Speaker should be satisfied that there are sufficient grounds to exclude the public and the Media in any committee activity. The person requesting for in-camera sessions should indicate the reasons for such a request.



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Parliament Buildings,
PO Box 41842 - 00100,
Nairobi, Kenya.

Email: nationalassembly@parliament.go.ke
Tel: (254-2) 222 12 91 or 284 80 00
Fax: (254-2) 224 36 94
Website: www.parliament.go.ke