

SPECIAL ISSUE

Kenya Gazette Supplement No. 170 (National Assembly Bills No. 71)



REPUBLIC OF KENYA

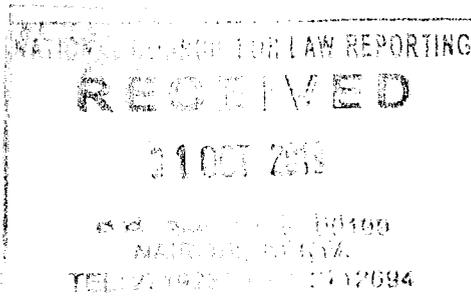
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2019

NAIROBI, 11th October, 2019

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THE PUBLIC PARTICIPATION (NO. 2) BILL, 2019
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THE PUBLIC PARTICIPATION (NO. 2) BILL, 2019**A Bill for**

AN ACT of Parliament to give effect to Articles 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; to provide for the parameters for public participation and define the obligations of state organs and public offices in conducting public participation and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Public Participation (No. 2) Act, 2019.

Short title.

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

Interpretation.

“civic education” means the provision of information and learning experiences to equip and empower citizens to participate in democratic and governance processes;

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

“public office” has the meaning assigned to it under Article 260 of the Constitution;

“public officer” has the meaning assigned to it under Article 260 of the Constitution;

“public participation” means the involvement and consultation of the public in the decision making processes of the relevant state organs and public offices;

“state organ” has the meaning assigned to it under Article 260 of the Constitution.

“State officer” has the meaning assigned to it under Article 260 of the Constitution;

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

Application.

4. The object and purpose of this Act is to provide a framework for—

Object and purpose of the Act.

(a) the involvement of the public in the process of decision making by state organs and public office;

- (b) informed, effective and efficient engagement of the public in decision making.

PART II—PUBLIC PARTICIPATION

5. A state organ or public office shall in conducting public participation be guided by the following principles—

Guiding principles in conducting public participation.

- (a) the need to provide timely access to relevant information relating to public offices and state organs policy formulation and implementation;
- (b) the national values and principles of governance as provided for under Article 10 of the Constitution;
- (c) the values and principles of public service as set out under Article 232 of the Constitution;
- (d) principles of public finance as set out under Article 201 of the Constitution;
- (e) recognition and promotion of the role of non-state actors participation in decision making processes;
- (f) the values and principles of leadership and integrity under Chapter Six of the Constitution;
- (g) promotion of partnerships between public offices and state organs and the non-state organs in decision making processes; and
- (h) the participation of the women, youth and persons with disabilities in decision making processes.

6. A state organ or a public office shall —

Obligations in conducting public participation.

- (a) establish structures for public participation as may be required for effective participation;
- (b) ensure that public participation activities are inclusive and not limited to sector stakeholders;
- (c) provide the public with information on how public participation is to be undertaken and how decisions shall be made;
- (d) allocate adequate financial resources for undertaking public participation;
- (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;

- (f) establish a monitoring and evaluation framework for public participation processes undertaken;
- (g) enhance participation through civic education for purposes of creating an enlightened and empowered citizenry;
- (h) request by formally inviting sector stakeholders to make submissions through memoranda on issues under deliberation;
- (i) implement set standards and guidelines regarding public participation under section 5;
- (j) publish notices inviting the public to provide input on comments on a matter under deliberation in accordance with section 10;
- (k) ensure that public input is analyzed 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;
- (l) ensure that all persons have fair and equal access to the public participation processes;
- (m) ensure timely access to information by the public on the subject matter under deliberation and the issues to be addressed; and
- (n) ensure information on public participation is tailored to meet the needs of persons with disabilities, older members of the society and the less educated citizens and may include the use of Braille and local languages.

7. The National Assembly and the Senate shall facilitate public participation and involvement on matters under deliberation before either House through the constituencies and the county assemblies respectively to avoid duplication of efforts and wastage of public funds.

Public participation by Parliament.

- 8.** (1) A member of the public has the right to —
- (a) attend public participation fora;
 - (b) make presentations either orally or by way of written submission to a state organ or public office;

Rights of a member of the public in public participation.

- (c) be accorded a reasonable time to make a presentation; and
- (d) make presentations without interruption or influence by a state or public officer and input by a state or public officer shall be limited to giving instructions and making clarification on issues raised in the matter under consideration.

(2) Information that contains allegations of wrongdoing against another person shall not be received in public participation fora unless accompanied by a sworn statement by the person making the allegation.

(3) The sworn statement under subsection (2) shall be made available to the relevant public or state officer at least thirty minutes before the submission containing such allegations is made.

9. (1) The chief executive officer of a state organ or public office shall be the public participation officer of that entity for the purposes of this Act.

Designation of public participation officers.

(2) The chief executive officer of a state organ may delegate the performance of the duties as the public participation officer to any other officer of that entity.

PART III- PUBLIC PARTICIPATION FORUM

10. (1) A state organ or public office shall convene a public participation forum and ensure that the forum is fully publicized to enable the attendance and participation of a wide section of the public, including the women, youth and marginalized groups.

Public participation forum.

(2) A state organ or public office shall appoint a secretary for every forum who shall—

- (a) take minutes of the proceedings of the forum;
- (b) publicize the resolutions of forum;
- (c) identify the issues arising from the forum that require the action of state organ or public office; and
- (d) give feedback to the public on the action taken for each of the issues raised.

(3) A state organ or public office may convene a special public participation forum to discuss any matter in

any state organ or public office including matters relating to—

- (a) budgeting and financial management;
- (b) strategic plans;
- (c) formulation of policies; or
- (d) any other matter affecting the public.

(4) A special forum convened under subsection (4) may include representatives of the following organizations—

- (a) an umbrella body representing professional associations;
- (b) an association representing the private sector;
- (c) a cluster organization representing—
 - (i) the registered associations of the informal sector;
 - (ii) labour associations;
 - (iii) the women and youth associations;
 - (iv) persons with disabilities;
 - (v) religious-based groups; and
 - (vi) such other organizations as may be required depending on the matter for which the forum is convened.

(5) A public participation forum shall be open to all members of the public who desire to attend and participants shall be allowed to speak personally or through representatives.

11.(1) Where a public participation forum is convened, a state organ or public office shall ensure that notice of at least twenty one days, unless a written law provides otherwise, is given to the public through—

- (a) advertisement in at least two local dailies of wide circulation in the country;
- (b) advertisement through radio; and
- (c) any of the mechanisms for dissemination of information referred to under section 12.

Notification of
public
participation fora.

- (2) The notice given under subsection (1) shall—
- (a) include a statement summarizing the subject matter to be deliberated on in the forum;
 - (b) provide the ways in which documents relating to the subject matter of the proposed forum may be accessed by the interested parties; and
 - (c) invite the public to submit written comments or representations to the relevant state organ or public office indicating the time and date within which the written comments or representations should be made.

12. A state organ or a public office shall take affirmative measures to ensure that marginalized groups participate in policy formulation including creating mechanisms that ensure that marginalized groups have timely access to information relating to public offices and state organs.

Affirmative action programmes.

PART IV- MISCELLANEOUS PROVISIONS

13. A person aggrieved by a decision of a state organ or public office on any matter relating to public participation may petition a state organ or public office for review of that decision.

Petition for review.

14. A decision made by a state organ or a public office without subjecting it to public participation shall be invalid.

Validity of decisions of state organs and public office.

15. A state or public officer who in conducting public participation fails to adhere to the principles and obligations set out under section 5 and 6 commits an offence and shall upon conviction be liable to a fine not exceeding three hundred thousand shillings or imprisonment for a term not exceeding six months, or to both.

Offence and penalty.

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose of this Bill is to give effect to Articles 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. The Bill further seeks to establish a legal framework, the parameters for public participation and defines the obligations of state organs and public offices in conducting public participation. The Bill also seeks to enhance public participation by creating a framework for informed, effective and efficient engagement of the public in decision making processes.

Part I of the Bill is on preliminary provisions.

Part II of the Bill sets out the principles governing public participation, obligations of state organs and public offices in conducting public participation, the role of the National Assembly and the Senate in conducting public participation, the rights of a member of public in public participation and designates public participation officers.

Part III of the Bill provides for public participation forum. **Clause 10** provides for the period within which the forum shall be conducted, the manner, matters to be discussed and persons who may be included. **Clause 11** provides for notification of public participation fora. **Clause 12** provides for various communication mechanisms that may be used to disseminate information. **Clause 13** provides for affirmative action programmes in public participation.

PART IV of the Bill provides for miscellaneous provisions.

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

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement as to whether the Bill concerns county governments

The Bill affects the functions of the county governments and is therefore a Bill concerning counties for purposes of the Standing Orders.

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

The Bill is a money Bill for the purposes of Article 114 of the Constitution as the enactment of this Bill will occasion additional expenditure of public funds.

Dated the 2nd October, 2019.

CHRIS WAMALWA,
Member of Parliament.

