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**REPUBLIC OF KENYA**

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**SENATE BILLS, 2016**

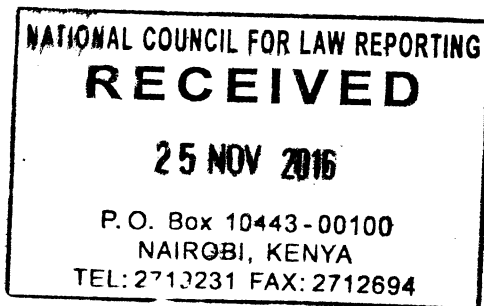
**NAIROBI, 8th November, 2016**

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## THE PUBLIC PARTICIPATION BILL, 2016

### 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 1(2), 10(2), 35, 69(1)(d), 118, 174(c) and (d), 184(1)(c), 196, 201(a) and 232(1)(d) of the Constitution; and for connected purposes.**

**ENACTED** by the Parliament of Kenya, as follows—

**1.** This Act may be cited as the Public Participation Act, 2016.

Short title.

**2.** In this Act—

Interpretation.

“cabinet secretary” means the cabinet secretary responsible for matters relating to public participation;

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

“responsible authority” means the respective authority responsible for public participation under section 5; and

“specific guidelines” means the guidelines developed by a responsible authority in accordance with section 6.

**3.** The object of this Act is to enhance, promote and facilitate public participation in governance processes and in particular to—

Object of the Act.

- (a) give effect to the principles of public participation as provided for in Articles 1(2), 10(2), 35, 69(1)(d), 118, 174(c) and (d), 184(1)(c), 196, 201(a) and 232(1)(d);
- (b) promote democracy and participation of the people in accordance with Article 10 of the Constitution;
- (c) promote transparency and accountability in decision making;
- (d) enhance public awareness and understanding of governance processes;
- (e) promote community ownership of public decisions; and
- (f) promote public participation and collaboration in governance processes.

**4. Public participation in governance processes shall be guided by the following principles —**

Guiding principles.

- (a) that the public, communities and organisations to be affected by a decision shall have a right to be consulted and involved in the decision making process;
- (b) provision of effective mechanisms for the involvement of the public, communities, organizations and citizens that would be affected by or that would be interested in a decision;
- (c) participants' equitable access to the information they need to participate in a meaningful manner;
- (d) that public views shall be taken into consideration in decision making;
- (e) development of appropriate feedback mechanisms;
- (f) adherence to the national values under Article 10 of the Constitution;
- (g) adherence to the principles of leadership and integrity set out in Chapter Six of the Constitution;
- (h) adherence to the principles of public participation as may be prescribed by any written law; and
- (i) promotion of sustainable decisions recognising the needs and interests of all participants, including decision makers.

**5. (1) For the purposes of this Act, the responsible authority for purposes of developing specific guidelines for public participation and oversight of public participation shall be, in the case of—**

Determination of responsible authority.

- (a) Parliament, the relevant committee, in each House, responsible for public participation for purposes of House business in each House;
- (b) the Judiciary, the Chief Justice;
- (c) independent commissions or offices, boards, authorities or any other public body, the respective secretaries or chief executive officers of the public body;

- (d) Government ministries, the Cabinet Secretaries for the Government Departments responsible for public participation;
- (e) County Assemblies, the county assembly committees responsible for public participation; and
- (f) county executives, the County Secretaries.

(2) The responsible authority for public participation for which no responsible authority is otherwise specified in this Act, is the commission, committee or other body prescribed by regulation.

6. (1) Each responsible authority shall develop specific guidelines for undertaking public participation in the institution for which it is the responsible authority.

Development of specific public participation guidelines.

(2) The guidelines developed by a responsible authority shall include all the requirements in the general guidelines for public participation set out in the Schedule and may include specific requirements beyond what is required under the general guidelines for public participation under the Schedule.

(3) Until a responsible authority has developed specific guidelines relevant to the respective public body under this section, the general guidelines on public participation under this Act shall apply as though they were the specific guidelines developed by the responsible authority.

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

Publication of specific public participation guidelines.

(2) In relation to a responsible authority under section 5(2) of this Act, this section shall apply as though the reference in subsection (1) to the commencement of this Act were a reference to the commencement of the regulation.

8. (1) (a) The responsible authority shall prepare an annual report at the end of each financial year.

Reports.

(b) Where the responsible authority relates to an institution that is required by any written law, to

submit an annual institutional report, the report referred to under subsection (1) will form part of the institutional report.

(2) The annual report generated under subsection (1) shall be tabled, in the case of a national government institution, in the National Assembly and the Senate, or, in the case of a county government institution, the respective County Assembly not later than three months after the end of the year to which it relates.

(3) The annual report shall contain—

- (a) a description of the activities and outcomes of public participation;
- (b) a description of any complaints made against the institution in respect of public participation, the action taken and the period within which the complaint was addressed; and
- (c) any other information, that the responsible authority may consider relevant.

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

9. The Cabinet Secretary responsible for matters relating to public participation may, with the approval of Parliament, make regulations for the better carrying into effect of the provisions of this Act.

Regulations.

**SCHEDULE s. 6(2)****GENERAL PUBLIC PARTICIPATION GUIDELINES**

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

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

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

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

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

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

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

(2) for purposes of paragraph (1), the responsible authority shall establish mechanism to enable the widest reach which may include—

- (a) television stations;
- (b) information communication technology centres;
- (c) websites;
- (d) community radio stations;
- (e) public meetings; and
- (f) traditional media.



**5. (1)** The responsible authority shall ensure that stakeholders have fair and equal access to the public participation process and the opportunity to influence the intended decision.

Access to public participation processes.

(2) The responsible authority shall take all necessary measures to ensure the participation of persons with disabilities in the public participation processes.

(3) Where the targeted participants are not conversant in the national languages, the responsible authority shall provide an interpreter for those participants who wish to make their remarks in their local language.

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

Consultation framework.

(2) A public participation programme under subsection (1) shall clearly identify—

- (a) specific purposes for consultation;
- (b) the community, profession or groups to be consulted;
- (c) the length of the consultations;
- (d) whether submissions should be oral, written or both; and
- (e) the issues or matter for consultation.

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

e-platform

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

Timeframe for participation.

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

Consultation documents.

**10. (1)** The responsible authority shall—

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

Access to information for public participation.

websites, community radio announcements or traditional media; and

- (b) ensure that the documents are published and distributed in a language and form that can be used by the public.

(2) A person may request for information relating to an issue under consideration.

(3) A request for information under subsection (2)—

- (a) shall be addressed to the head of the responsible authority or such other person as the authority may designate for that purpose;
- (b) may, where the authority incurs expense in providing the information, be subject to payment of a reasonable fee; and
- (c) may be subject to confidentiality requirements of the authority.

(4) Subject to the provisions of Article 35 of the Constitution and the law relating to freedom of information and data protection, the responsible authority may decline to give information to an applicant where—

- (a) the request is unreasonable in the circumstances; or
- (b) the applicant fails to satisfy any confidentiality requirements imposed by the responsible authority.

(5) The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section.

11. The responsible authority shall ensure —

Processing of responses.

- (a) that all responses are carefully and independently analysed;
- (b) the final decision is made widely available to the public, including the reasons for the decisions taken; and
- (c) the disclosure of all relevant information for the public to understand and evaluate the decision made.

12. The authority shall—

Credibility and integrity of the

- (a) undertake and encourage actions that build trust and credibility in the public participation process among all the participants; Process.
- (b) be responsible for the validity of all data collected, analyses performed, or plans developed by it or under its direction; and
- (c) not engage in conduct involving dishonesty, fraud, deceit, misrepresentation or discrimination;
- (d) not accept any payments or gifts given contingent on an interested party's desired result where that desired result conflicts with its professional judgment;
- (e) in undertaking public participation, avoid relationships or actions, which could be legitimately interpreted as a conflict of interest by clients, officials or the public; and
- (f) ensure there is no misrepresentation of facts relating to the relevant body.

**13. (1)** All participants, including the representatives of the responsible authority and all respondents, shall be courteous, respectful and civil in public participation processes.

Conduct in public participation processes

(2) Individuals who are disruptive shall be given a warning and, may, if necessary, be removed from a meeting.

(3) A persons freedom of expression under Article 33 of the Constitution shall be limited to the nature and extent specified under this section.

## **MEMORANDUM OF OBJECTS AND REASONS**

The principal object of the Bill is to provide a framework for effective public participation. The Constitution of Kenya 2010, ushered in a new system of governance that places the people at the centre of governance. Accordingly, all public processes ranging from policy making, legislative process and ultimate decision making, require the participation of the people of Kenya. This Bill therefore proposes to provide a mechanism to facilitate effective and coordinated public participation. The Bill therefore gives effect to the Constitutional principles of public participation and participatory democracy as well enunciated in Articles 1, 10, 35, 69, 118, 174, 184, 196, 201, and 232 of the Constitution, respectively.

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. 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.

### **Statement on how the Bill concerns county governments**

The Bill seeks to provide a national framework for public participation. Public participation is a Constitutional requirement at all levels of government. The Bill therefore concerns county governments in terms of Articles 110(1)(a) of the Constitution in that it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

### **Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution**

This is a framework legislation. Any cost relating to public participation is already provided for in the institutional budgets and therefor there are no new structures that are set to be established. The Bill is therefore not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 19th October, 2016.

**AMOS WAKO,**  
*Chairperson, Standing Committee on Legal Affairs and Human Rights.*