

PARLIAMENT OF KENYA

THE SENATE

BILLS DIGEST

THE PUBLIC PARTICIPATION BILL, 2025 (NATIONAL ASSEMBLY BILL NO. 44 OF 2025)

Sponsor: Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights

Type of Bill: Ordinary Bill

A. Overview of the Bill

The principal object of the Bill is to create a legal framework for the conduct of public participation in order to give effect to the constitutional principle of participation of the people enshrined in Articles 10(2), 69(1)(d), 118, 174(c), 184(1)(c), 196, 201(a) and 232 (1)(d) of the Constitution.

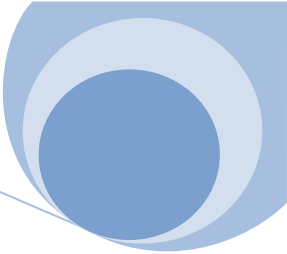
The Bill identifies the responsible authorities in the public participation process and outlines guidelines for the carrying out of public participation.

The following are the salient provisions of the Bill.

I. Preliminary

The Bill is aimed at enhancing public participation in governance as provided for in the Constitution. It defines a responsible authority as the person responsible for public participation.

It applies a set of general duties on responsible authorities who are required to facilitate public participation on matters relating to formulation and implementation of public participation on matters relating to the formulation and implementation of public policies, law making processes or any matter that is required by legislation.



II. Responsible Authorities and Guidelines for Public Participation

Clause 6 of the Bill outlines the various responsible authorities that are responsible for the carrying out of public participation. Part III of the Bill contains the provisions relating to general guidelines for public participation. Clause 7 of the Bill outlines the various considerations that a public authority is required to undertake in all public participation exercises.

Under this part, public authorities are also required to notify the public about the public participation exercise. Clause 9 of the Bill outlines the various methods through which a responsible authority may notify the public about the public participation exercise. The responsible authority is also required to allow reasonable time for the public to make their submissions and to ensure that there is public access to the participation process as well as access to documents relating to the matter under consideration in a public participation exercise.

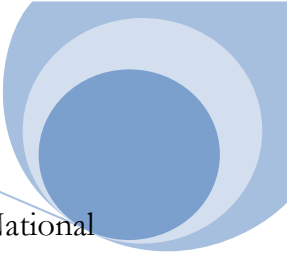
The Bill also addresses the manner in which submissions made in public participation exercises may be made. This part of the Bill also requires persons who attend or conduct public participation forums to be courteous, respectful and civil. Responsible authorities are required to facilitate the public participation exercise.

III. Specific Guidelines for Public Participation

Part IV of the Bill outlines the specific guidelines for public participation. This part of the Bill allows a responsible authority to develop specific guidelines for the conduct of public participation. These guidelines are to comply with the general guidelines of Part III of the Act.

Further, the specific guidelines must be published in the Kenya Gazette. Clause 17(2) states that despite the provisions on specific guidelines on public participation, a House of Parliament or county assembly shall incorporate its specific guidelines on public participation in its Standing Orders.

The Bill also makes provisions for public participation by Parliament. It states that where a Committee of one House of Parliament has conducted public participation on a Bill, a Committee of the other House may either rely on the report tabled by the Committee of the originating House or seek additional views on the Bill with respect to substantive amendments made to the Bill during its consideration. The Bill further allows a Committee of the originating House to hold a joint public participation exercise with its counterpart Committee of the other



House with respect to a Bill originating from the other party forming the National Governments. The Bill further empowers a Committee of a House to Parliament to take measures to avoid duplication of a public participation undertaken by a Committee of the originating House.

IV. Miscellaneous Provisions

The miscellaneous provisions of the Bill are contained in Part V of the Bill. Clause 19 prohibits a responsible authority from disclosing protected information during the public participation exercise. Moreover, the Bill requires responsible authorities to process personal data in compliance with the Data Protection Act.

The Bill also allows the High Court to void a public participation exercise conducted in wilful violation of the provisions of the Bill.

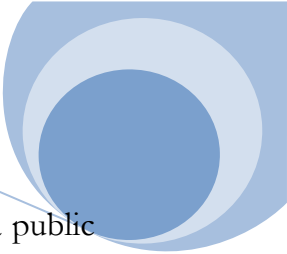
B. Consequences of the Bill

If enacted, the Bill will have profound consequences for public participation in the country. The absence of a definitive legal framework for public participation has been the underlying cause for multiple lawsuits and judgements in the superior courts of Kenya.

For instance, in the case of *British America Tobacco Kenya PLC v Cabinet Secretary for the Ministry of Health and 2 others*¹, the Supreme Court held that public participation and consultation was a living constitutional principle that went to the constitutional tenet of the sovereignty of the people. Public participation had to be real and not illusory. It was not a cosmetic, public relations act or a mere formality to be undertaken as a matter of course just to ‘fulfill’ a constitutional requirement. There was need for both quantitative and qualitative components in public participation. The court set out a set of guiding principles for public participation as follows—

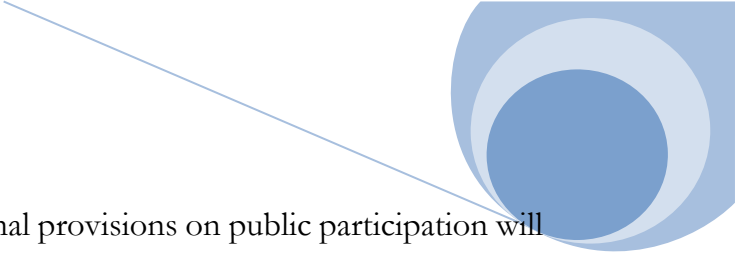
- (i) a constitutional principle under article 10(2) of the Constitution, public participation applies to all aspects of governance.
- (ii) The public officer and or entity charged with the performance of a particular duty bears the onus of ensuring and facilitating public participation.
- (iii) The lack of a prescribed legal framework for public participation is no excuse for not conducting public participation; the onus is on the public entity to give effect to this constitutional principle using reasonable means.

¹ *British America Tobacco Kenya PLC v Cabinet Secretary for the Ministry of Health and 2 others* [2019] KESC 15 (KLR)

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- (iv) Public participation must be real and not illusory. It is not a cosmetic or a public relations act. It is not a mere formality to be undertaken as a matter of course just to 'fulfill' a constitutional requirement. There is need for both quantitative and qualitative components in public participation.
 - (v) Public participation is not an abstract notion; it must be purposive and meaningful.
 - (vi) Public participation must be accompanied by reasonable notice and reasonable opportunity. Reasonableness will be determined on a case-to-case basis.
 - (vii) Public participation is not necessarily a process consisting of oral hearings, written submissions can also be made. The fact that someone was not heard is not enough to annul the process.
 - (viii) Allegation of lack of public participation does not automatically vitiate the process. The allegations must be considered within the peculiar circumstances of each case: the mode, degree, scope and extent of public participation is to be determined on a case-to-case basis.
 - (ix) Components of meaningful public participation include the following:
 - a) clarity of the subject matter for the public to understand;
 - b) structures and processes (medium of engagement) of participation that are clear and simple;
 - c) opportunity for balanced influence from the public in general;
 - d) commitment to the process;
 - e) inclusive and effective representation;
 - f) integrity and transparency of the process;
 - g) capacity to engage on the part of the public, including that the public must be first sensitized on the subject matter.

Further in the case of *Samuel Thinguri Waruathe & 2 others v Kiambu County Government & 2 others*², the High Court held that public participation and effective consultation are not a mere cosmetic venture. The product of the legislative process ought to be the true reflection of the public participation so that the end product bears the seal of approval by the public.

²*Samuel Thinguri Waruathe & 2 others v Kiambu County Government & 2 others* [2015] eKLR



The enactment of the Bill means that the constitutional provisions on public participation will gain codification and further that standards for public participation are definitively set in national law thus reducing the instances of litigation in the courts.

C. Public Participation on the Bill

The Bill was read a first time in the Senate on 8th September, 2026. In accordance with standing order 145 of the Senate Standing Orders, the Senate Standing Committee on Justice, Legal Affairs and Human Rights shall facilitate public participation and take into account the views and recommendations of the public when it submits its report to the Senate.

D. Resolution Sought

The Committee is invited to note the contents of this Bill Digest and decide on the appropriate modalities for conducting public participation on the Bill.