



1. Public Participation - Relevant Legal Provisions

1.1 Provisions of the Constitution of Kenya of 2010

This power has been expressly provided for under Kenya's statutory framework. Article 174 (1) of the **Constitution of Kenya 2010** provides for such powers under Public Participation.

Article 1(2) of the **Constitution of Kenya, 2010** states that all sovereign power belongs to the people of Kenya. It further states that people may exercise their sovereignty directly or through their elected representatives. After having already elected representatives, the people ought to directly exercise their sovereignty by being involved in democratic and governance processes at the national and county levels of government.

Additionally, Article 10 (2) of the **Constitution of Kenya 2010** indicates that public participation is among the national values and principles of governance. This has the effect that citizens have the right to have their opinion heard on matters of national importance.

Article 69 (d) states that the State shall encourage public participation in the management, protection and conservation of the environment. Article 118 (b) states that Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its committees. Article 196 (b) states that a County Assembly shall facilitate public participation and involvement in the legislative and other business of the assembly and its committees.

Article 201 (a) states that there shall be openness and accountability, including public participation in financial matters in all aspects of public finance in the Republic.

1.2 Provisions of the County Government Act

The **County Government Act Sections 94 and 95** provide that counties are to establish mechanisms to facilitate public communication and access to information with the widest public outreach using media. Sections 100 and 101 of the same Act provide that county governments should create an institutional framework for civic education. As per Section 30(3)(g) of the **County Governments Act**, the Governor should promote and facilitate citizen participation in the development of policies and plans, and service delivery in the county. Additionally, Section 46(2)(g) of the **County Governments Act** provides that the county executive committee should bear in mind the need to all participatory decision making. Section 70 of the **County Governments Act** also provides that a county government may conduct a local referendum on among other local issues, county laws and petitions or planning and investment decisions affecting the county for which a petition has been raised and duly signed by at least twenty five percent of the registered voters where the referendum is to take place.

Section 3 (f) provides that the Act shall provide for public participation in the conduct of the activities of the county assembly as required under Article 196 of the Constitution of Kenya.

Section 9 outlines the Role of Members of the County Assembly and states that these members shall maintain close contact with the electorate and consult them on issues before or under discussion in the county assembly in addition to providing a linkage between the county assembly and the electorate on public service delivery.

Section 104(4) states that to promote public participation, non-state actors shall be incorporated in the planning processes by all authorities.

Section 115 states that public participation in the county planning processes shall be mandatory and be facilitated through mechanisms provided for in the Act and provision to the public of clear



and unambiguous information on any matter under consideration in the planning process. This information includes clear strategic environmental assessments, clear environmental impact assessment reports, expected development outcomes, and, development options and their cost implications.

Section 115 further provides that each county shall develop laws and regulations giving effect to the requirement for effective citizen participation in development planning and performance management within the county and such laws and guidelines shall adhere to minimum national requirements.

1.3 Provisions of the Public Finance Management Act

The **Public Finance Management Act** under Section 207 provides that County Governments are to establish structures, mechanisms and guidelines for citizen participation.

Section 10 outlines the Responsibilities of the Parliamentary Budget Office and states that in carrying out its functions the Parliamentary Budget Office shall observe the principle of public participation in budgetary matters.

Section 35 sets out the stages in the budget process for the national government in any financial year and states that the Cabinet Secretary shall ensure public participation in the said budget process.

Section 125 sets out the stages in the budget process for county governments in any financial year and states that the County Executive Committee member for finance shall ensure that there is public participation in the budget process.

Section 175 (9) states that in preparing the strategic plan and the annual budget estimates, the accounting officer of an urban area or city shall ensure that the public is given an opportunity to participate in the preparation process as outlined in the second Schedule of the Urban Areas and Cities Act, 2011, and for that purpose, may publish guidelines for public participation.

Section 205 provides for the Powers of the Cabinet Secretary to make Regulations pursuant to the Act and Section 207 provides that such regulations may provide for participatory governance for purposes of the Act i.e.; -

- Structures for participation
- Mechanisms, processes and procedures for participation
- Receipt, processing and consideration of petitions, and complaints lodged by members of the community
- Notification and public comment procedures
- Public meetings and hearings
- Special needs of people who cannot read or write, people with disabilities, women and other disadvantaged groups
- Matters with regard to which community participation is encouraged
- The rights and duties of members of community; and
- Any other matter that enhances community participation.

1.4 Provisions of the Urban Areas and Cities Act

The **Urban Areas and Cities Act** also provides for public participation. Under the Act, the overarching theme is participation by the residents in the governance of urban areas and cities. The Second Schedule of the Act provides for the rights of, and participation by residents in affairs of their city or urban areas. The Act also provides for avenues of public participation such as citizen's fora, development pacts and MOUs (Memorandum of understanding) signed between public service providers and representatives of citizens.



Provisions of the Public Participation Bill, 2016

The principal object of the Public Participation Bill, 2016 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.

1.5 Provisions of the Transition to Devolved Government Act

Section 4 of the Act establishes the Transition Authority.

Section 14 of the Act states that in the performance of its functions or the exercise of the powers conferred by the Act, the Transition Authority shall be accountable to the people of Kenya and ensure their participation in the transition process.

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