

# EXPERIENCE OF HEALTH CSOS IN PUBLIC PARTICIPATION IN KENYA

## The Case of Health NGOs' Network (HENNET)

### Introduction:

Public Participation is generally understood as any procedure that actively involves the public in decision-making and fully considers their feedback, is considered public participation. In Kenya Public Participation is clearly provided for in the Constitution of Kenya, the Public Finance Management Act, and the County Government Act.

### Provisions for Public Participation in Kenya

LEGAL DOCUMENT	Article/Section	Statement
The Constitution of Kenya 2010[1]	Article 1(2)	The people may exercise their sovereign power either directly or through their democratically elected representatives.
	Article 10 (2)(a)	The national values and principles of governance include — patriotism, national unity, sharing and devolution of power, the rule of law, democracy, and participation of the people.
	Article 69 (d)	The State shall - encourage public participation in the management, protection, and conservation of the environment;
	Article 118 (b)	Parliament shall - facilitate public participation and involvement in the legislative and other business of Parliament and its committees.
	Article 196 (b)	A county assembly shall - facilitate public participation and involvement in the legislative and other business of the assembly and its committees.
	Article 201 (a)	The following principles shall guide all aspects of public finance in the Republic - there shall be openness and accountability, including public participation in financial matters;
	Article 221 (5)	In discussing and reviewing the estimates, the committee shall seek representations from the public and the recommendations shall be taken into account when the committee makes its recommendations to the National Assembly.
	Article 232 (1) (d)	The values and principles of public service include - involvement of the people in the process of policy making;
The County Government Act 2012	Section 3 (f)	The object and purpose of this Act is to - provide for public participation in the conduct of the activities of the county assembly as required under Article 196 of the Constitution;
	Section 9	A member of a county assembly shall— maintain close contact with the electorate and consult them on issues before or under discussion in the county assembly;

The Public Finance Management Act 2012	Section 46(2)(g)	When establishing and organizing the county, the county executive committee shall take into account, and be guided by, the need to - allow participatory decision making as far as is practicable;
	Section 30(3)(g)	In performing the functions under subsection (2), the governor shall - promote and facilitate citizen participation in the development of policies and plans, and delivery of services in the county.
	Section 94 and Section 95 public awareness Education	County government shall establish mechanisms to facilitate public communication and access to information in the form of media with the widest public outreach in the county.
	Section 100 Section 101 on Civic Education	Subject to section 100, County legislation shall provide the requisite institutional framework for purposes of facilitating and implementing civic education programmes under this Part.
	Section 104(4)	To promote public participation, non-state actors shall be incorporated in the planning processes by all authorities.
	Section 115	Public participation in the county planning processes shall be mandatory.
	Section 10(2)	In carrying out its functions the Parliamentary Budget Office shall observe the principle of public participation in budgetary matters.
	Section 25 (5) (d)	In preparing the Budget Policy Statement, the National Treasury shall seek and take into account the views of — the public;

**Identified Challenges Facing Public Participation in Kenya as per the Draft Public Participation Policy 2023**

<b>Challenges</b>	<b>Suggestive Corrective Measures-The Kenya Health CSOs Perspective</b>
Absence of Absence of Standards	<p>Kenya has a long history of public engagement, however despite, the country lacks clear policy objectives and criteria for effective public participation.</p> <p>The Kenya Public Participation Bill was first read and tabled into National Assembly in 2023, about 5 years after it was read in 2018, which was about 8 years since the Constitution of Kenya was passed in 2010 outlining the need for public participation in government processes.</p> <p>The National Assembly is therefore mandated to ensure legal provisions by fast tracking the finalization and passing of the Public Participation Bill 2023[1], and the Public Participation Policy 2023, the Act thereof which will put in place the Regulations that would then guide effective Public Participation.</p>
Inadequate coordination Among Providers	<p>A proper flow of the review process needs to be clearly articulated.</p> <p>In the case of the 2023, Public Participation Sessions for the 13th Parliament on the Health Bills, later ascended into Acts; namely, Primary Health Care Act, 2023, the Digital Health Act, 2023,</p>

	<p>the Facility Improvement Financing Act, 2023 and the Social Health Insurance Act, 2023, very little time was given for public participation hence undermining the substance of the Acts as well as the buy in of the people of Kenya to whom the reforms are to benefit. The flow of submissions from the state department to the senate to national assembly should be outlined to allow for the rightful procedure in law making. In the same year, a public participation timeline was recalled by parliament reducing the time of public engagement.</p> <p>In a fact sheet[1] by the National Assembly, it provides for guidance on Public Participation in the Legislative Process in the following steps.</p> <ul style="list-style-type: none"> <li>• Creating awareness by Placing adverts in mainstream media, both print and electronic. This helps in generating awareness and increases citizen interest to participate and give views.</li> <li>• Involvement Identify the key stakeholders or interested groups including those directly affected and those that can offer solutions.</li> <li>• Contacting the public Communicate to the stakeholders through writing and inviting them for meetings and requesting submission of documents or memoranda.</li> <li>• Meetings Hold meetings to get views including field visits.</li> <li>• Feedback mechanism: Through drafting and tabling of the resultant report.</li> </ul>
<p>Ineffective Inclusion of special interest groups</p>	<p>Addressing the power disparities preventing some interest groups from contributing to government processes in a meaningful way and ensuring deliberate availability of information to such interest groups in the most suitable formats for their readability is fundamental for effective public participation.</p> <p>The Public Participation Bill 2023, in General public guidelines 3(3) excluded availability of translation for sign language and where necessary brail for the visually impaired. It is prudent that such options are not excluded in legal documents to foster inclusivity of all special interest groups.</p>
	<p>Without informing the public, organizers may change the dates or locations of consultative sessions with short notice or not availing information on official platforms; they also disregard protocol, omit or not avail important papers and information.</p> <p>General Public Participation Guideline 3(4) of the Public Participation Bill gives liberty for the state organ conducting public participation to decide the timeframe for which they shall provide legal notices for public participation.</p>
<p>Incoherent participation logistics and poor communication</p>	<p>Health CSOs through HENNET in a memo submitted to National Assembly on Feb 13th, 2024, sought the Bill.</p> <ol style="list-style-type: none"> <li>1. To stipulate that the notice period should not be less than 21 working days, a time of which all documents should be availed through the official platforms such as government websites.</li> <li>2. Stipulated physical participation dates and venues should in the same 21 days be issues not less than 1 week before the actual day of the participation.</li> <li>3. Nevertheless, clear public input submissions options should be indicated including and not limited to memo submissions on email, physically and in person during the physical forums.</li> </ol>

Minimalism and  
“Compliance Only”  
Attitude, Citizen  
Apathy and Limited  
Civic Education and  
Inadequate Capacity

Civil Society Organizations such HENNET have a clear mandate to empower communities to realize that the Constitution gives the people the power to exercise their sovereign power either directly or through their democratically elected representatives. However, where the elected leader does not take into consideration the public then their sovereign power applies.

Increasing the quantity and quality of civic education empowers local communities to understand they their contributions in shaping priorities of the county and national government are a constitutional right.

CSOs can provide purpose-oriented civic education targeting timely opportunities such as just before budget making processes or as soon as a national law is introduced ahead of plans for public participation. In such forums, simplified versions of the intended documents of review needs to be simplified and contextualized for the community to understand.

HENNET has and is continuously capacity building champions in the different 8 HENNET[1] regions in Kenya, with the skills to support communities voice their concerns through approaches such as SMART Advocacy where, one learns to develop key messages and gathers enough compelling evidence to build their case for negotiation during the public participation forums.

Inadequate Funding

Each state department required to engage citizens in government processes should put into consideration budgetary needs to cater for the exercise.

Public participation costs may include but are not limited to:

1. Cost of hiring a legal officer
2. Translating the material
3. Publishing and advertising the content and reports after public participation.
4. Cost of renting venues and equipment and refreshments for physical public participation.

In some cases, participants might expect reimbursements such as transport to the forums. However, as a good practice the venues should be within reachable radiuses. Citizens are encouraged to take the exercise as part of their civic duties and reimbursements should not necessarily be the motivators for public participation.

Ineffective M & E  
Systems, Poor  
Learning and Feedback  
Mechanism

Public Participation Reports are prudent in enforcing patriotism and commitment of Kenyans to ensure their civic duty in shaping government priorities in all processed. Such reports should therefore be provided as stipulated and ensuring they capture all relevant aspects including and not limited to;

1. Summary of all parties that participated in the said notice for public participation.
2. Summary of feedback collected and report on what was considered, what was not considered and reasons for not consideration.
3. Demographic analysis of the number of people engaged.
4. Summary engagement methods used; barriers of participation encountered.
5. The call for public participation and the responses on the same by public including matters raised which were outside the focus area.
6. For descending voices or supports, a threshold of the proportion which is of supporting or contrary opinion on the matter should be set.

## HENNET and other CSOs Efforts in Promoting Effective Public Participation in Kenya

To encourage and foster participation and group action on shared interests and concerns, citizens often band together to form organizations within the community that are generally referred to as Civil Society Organizations (CSOs). CSOs are nonprofit organizations that are governed by members of their constituency, with no leadership involvement or representation from the government. To address shared interests, civil society organizations provide a more efficient way to engage, exert influence, act, and offer oversights to governance procedures and service delivery. Public Participation can be fostered through some of the below approaches:

1. **Community Led Monitoring (CLM):** Through a cyclical process known as community-led monitoring (CLM), individuals impacted by health disparities methodically track services, evaluate the information they gather, and engage in evidence-based advocacy to enhance the delivery of services, produce solutions, and foster an atmosphere that supports their well-being. As a component of the community-led response, this is carried out in coordination with important partners.
2. **Citizen Generate Data (CGD).** It offers precise and fast statistics on matters affecting citizens. By including citizens in one or more phases of the data value chain—from production to analysis, distribution, and utilization—on topics that are important to them, CGD empowers citizens. By guaranteeing inclusion and responsiveness, it enables people to work together and participate in public decision-making.
3. **Advocating for Enactment of Public Participation Bill and Policies.** Without the proper legal provisions and standard guidelines, public participation remains to be impractical and unviable.
4. **Civic Education:** The proper information must be made available to the people so that they can engage in public affairs and the advancement of their country.

### HENNET's Approach in Mobilizing Health CSOs during Public Participation Forums.

To ensure different community constituent priorities are included in key legislative processes such as Bills, Policies and Budget reviews, the Health NGOs' Network (HENNET) assumed its mandate to caucus CSOs as the unbiased coordinator of health CSOs in Kenya to review the proposed health bills and prepare memos for the same to respective offices including Ministry of Health, Senate Health Committee and National Assembly Health Committee.

A combination of both physical and virtual meetings is deployed to get feedback from CSOs that contributed to the memo development. In such forums, a review of the reference document is facilitated by an expert such as a lawyer or budget experts and then smaller group discussions are held to collect feedback that is collated by HENNET. Member organizations present are included in the memo as an index. A virtual copy is submitted via email and 2 physical copies are presented, one of which is stamped for the recipient office and another for custody and reference by HENNET and its membership. The turnaround time for submitting the memos has always been very short hence the need to act fast. CSOs have been committed to join the memo development forums on short notice to ensure our voices and of the constituents that we represent are not left out.

HENNET presents an opportunity for government to work with umbrellas organizations to support reach special interest groups that could perhaps be left out in key government processes.

By allowing ample time, such umbrellas would mobilize their different constituents to gather feedback that they can then channel through HENNET to be presented to the state department conducting the public participation. In so doing, CSOs contribute not only through extensive reach to the communities but also through footing costs of the exercise. Nevertheless, CSOs would thereafter follow through to get reports and feedback from the exercise and disseminate the same to their constituents.

## Conclusion

Decisions that are based on public participation procedures are regarded as legitimate and are less likely to be contested. Leaders and government officials who comprehend the interests of their citizens are also better equipped to explain decisions and their reasoning in a way that is relatable to the values and concerns of the people.