



**HENNET CSO Memoranda 2024  
On the Public Participation Bill (No. 52 of 2023)**

**Presented to  
The Parliamentary Broadcasting and Library Committee of the 13<sup>th</sup> Parliament of Kenya  
Copied to S. Njoroge, CBS, Clerk of the National Assembly**

**Date: 13<sup>th</sup> February 2024**

## CIVIL SOCIETY INPUTS AND COMMENTS

### Introduction

This memorandum is submitted following a Public Notice dated 26<sup>th</sup> January by the National Assembly 13<sup>th</sup> Parliament in the matter of consideration by the national assembly of the public participation Bill (National Assembly Bill No. 52 of 2023).

### HENNET CSOs Comments on the Public Participation Bill, 2023

Health NGOs Network (HENNET)				
S/No.	Regulation/Clause	Issue of Concern	Justification	Recommendation
	Title	The title of the Bill	Change the Name of the Bill to “The Civic Education and Public Participation Bill 2023”	Civic education and public participation are closely linked and intertwined. They are like two sides of the same coin. Importantly, it not possible to have meaningful public participation without civic education. In the event that it is not possible to change the name of the Bill in its current form, then specific clauses on civic education should still be included in the Bill to ensure that civic education is adequately considered and covered.
	Long Title	The long title of the Bill	Change the long title to include Article 174(c) and (d) of the Constitution of Kenya	The Bill has listed some Articles of the Constitution of Kenya of relevance to public participation but has excluded a key constitutional Article of relevance to public participation in the context of devolution namely the provisions of Article 174(c) and (d) of the Constitution of Kenya. This Article is necessary because the Bill if passed into law will regulate public participation at the two levels of government.
	Part I Preliminary	Definition of public participation	The definition is limiting and excludes other programs that are not legislative but require public participation such as the budget process	Recommend the adoption of the definition in the Draft Public Participation Policy that states, “public participation refers

			and electoral processes	to the process by which citizens, as individuals, groups or communities (also known as stakeholders), take part in the conduct of public affairs, interact with the state and other non-state actors to influence decisions, policies, programs, legislation and provide oversight in service delivery, development and other matters concerning their governance and public interest, either directly or through freely chosen representatives
	Section 2: Interpretation	Cabinet Secretary	The law should provide that the Cabinet Secretary responsible for implementation is the Cabinet Secretary responsible for Public Service	Since public participation is one of the national values of governance, and taking into consideration that Public Service Commission is responsible for implementation of the values, the law should give this responsibility to Public Service Ministry. In designing performance of National Government and supporting the County Governments, the Public Service Commission would therefore inclusion of public participation as one of the components in performance measurement. This will also ensure stability in implementation of the Act since trends have showed that Public Service Commission has always been a ministry in all governments unlike Justice. At most counties level, this function is under Departments for Public Service hence this approach would promote uniformity
	Section 2: Interpretation	Public participation	The definition of public participation should include “planning, budgeting, monitoring, evaluation and auditing”	For full realization of the provisions of Article 1 of the Constitution on retention of the sovereign power by

			as part of the decision-making processes for citizen engagement in decision making processes.	citizens in their governance and fulfillment of the provision of public participation as a principle and value of governance under Article 10 of the Constitution, the law should be explicit that the citizens shall be included in all levels of governance including the “planning, budgeting, monitoring, evaluation and auditing”.
	Section 4: Objects of the Act	Add clause (e)	Include an objective on civic education for enabling or promotion of public participation.	Civic education is important ingredient for public participation. It is therefore important to integrate civic education into this Bill since the Government can't promote public participation without conducting civic education.
	Section 5: Scope of public participation	Clauses a, b, c and d	Change clauses 5(a), (b) and (c) to Include implementation and (b) to also incorporate participation in planning, that is, A). “Formulation and implementation of policies”; B). Planning C). Planning budgeting and financial management D). Making and implementation of laws.  Also add sub-clause d). to provide for public participation in oversight processes including financial audits and overall service delivery processes	The import of the proposed changes is to integrate citizen Participation in all processes of public governance from policy making, planning, budgeting, implementation of plans and budgets, and financial and services delivery processes in line with Article 1 of the Kenyan Constitution.
	Section 6: Conduct of public participation	Section (2)	Include a section on (f) on interest and relevance of stakeholders	In Kenya major stakeholders have been biased by state organs in public participation whereby the organs have been undertaking direct consultations with the citizens /general public. By having two tiers of consultations will allow stakeholders to be consulted first before the public are consulted.

Part II	Section 6	Public Participation	<p>The Bill suggests 'reasonable and meaningful' as the standard for all participation opportunities extended by state agencies.</p> <p>In its current form however, the lack of a clear definition or threshold for 'meaningful' opportunities sets the success of the new bill in doubt. The strength of any legislation on public participation stems from how well it can provide a framework for 'meaningful' participation and, in doing so, boldly set a course for an inclusive, participatory democracy.</p>	<p>While the threshold for 'reasonable' is left to state agencies to determine, considerations of reasonability proposed are the nature of the legislation or decision, its importance to and impact on the public, as well as the need for inclusive and effective representation.</p> <p>Recommendation:</p> <p>Add Clause 6(f) to state "the state organ shall in providing meaningful and reasonable opportunities be required to conduct public participation in all the 47 counties in the case that the subject matter impacts all citizens.</p>
	Section 12(1)		<p>All reports for all public participation should be availed and not selected few.</p>	<p>Recommend addition of the word 'ALL'</p> <p>"Each state organ or public office shall prepare, publish, and disseminate to the public using appropriate channels, the annual report on <b>all</b> public participation.</p>
	Section 12 (4)		<p>The section outlines the specific elements to be included in the report, aiming for comprehensive coverage. However, its brevity may inadvertently restrict the scope. Enhancements are needed to ensure all relevant aspects are adequately addressed.</p>	<ol style="list-style-type: none"> <li>1. Recommend the addition of the following.</li> <li>2. Summary of all parties that participated in the said notice for public participation.</li> <li>3. Summary of feedback collected and report on what was considered, what was not considered and reasons for not consideration.</li> <li>4. Demographic analysis of the number of people engaged.</li> <li>5. Summary engagement methods used; barriers</li> </ol>

				<p>of participation encountered.</p> <p>6. The call for public participation and the responses on the same by public including matters raised which were outside the focus area.</p> <p>7. For descending voices or supports, there is a need for the threshold of the proportion which is of supporting or contrary opinion on the matter.</p>
	General public guidelines 2(1)	A state organ or public office shall be given adequate notice to make their input on the issue	Adequate notice is ambiguous and can be misinterpreted	The timeframe should be specified and clearly indicated in the clause. Recommend notice not less than 21 days
				Recommend insertion of (h) Organized networks and coalition groups.
	General public guidelines 3(2)	Shall take 'all necessary measures' to ensure the participation of persons with disability in public participation process	Majority of these persons might be left out in the processes due to inconsistent implementation of the clause due to lack of clarity on the necessary measures to be affected	Improve by being more specific on what all necessary measure entail and enforcement mechanism consequences of noncompliance.
	General public guidelines 3(3)			Where the targeted participants are not conversant with the national languages, the state organ or public office shall provide an interpreter for those participants who wish to make their remarks in their local language and sign language when required.  Recommend the addition of <b>sign language</b> .
	General Public Participation Guideline 3(4)	A state organ shall give the public adequate notice to make their input on issues	Decision on timeframe will still be at the discretion of the state organ as it is currently	Specific bare minimum timeline should be provided.  Recommend a time not less than 21 days.

	Clause (5)	We reaffirm Cabinet Secretaries as the responsible officers	This is because Cabinet Secretaries should have Authority over their Ministries
		The Government Department to be responsible for implementation of the law should be Public Service Commission and not Ministry of Justice, whereby the law custodian is the Attorney General	<p>We should have a reliable ministry leading implementation of Public Participation. We currently don't have Ministry of Justice and I don't trust that the AG can effectively spearhead lead Public Participation. Public Participation is one of the values of governance and we were in a meeting where it was indicated that overseeing implementation of the values is the responsibility of PSC. We believe that with an effective and strong PSC, Public Participation could be integrated into performance management with clear indicators.</p> <p>That the implementation of the bill should be charged on an independent body to coordinate public participation (PP) and Civic Education (CE) and ensure compliance. Same as Commission on Administrative Justice is for the Access to Information Act. Government Ministry will never be keen to ensure compliance when its matters Civic Education (CE) and public participation (PP) to citizens.</p>
Section 12	Section 12 (1)	Reporting by the responsible Ministry and Cabinet Secretary	Each year the Ministry should produce and publicize an annual report on public participation inclusive of a section of the financial expenditures
Schedule	Section (2) Subsection (3) (d)	Include also virtual option	To cater for those not present and those in the diaspora

	Section subsection (3) (b)	(5) There should be no charge for public information	If a charge is included it will limit the right to access to information and the ate organ may describe unreasonable figures to limit that same rights
	Section subsection (3) (c)	(5) There should be no confidentiality for public information unless it's security information which is Protected by law.	This clause may be used by state organs and public offices to Deny information hence violation of the right to public information.
	Section (5)	This section should be removed.	Unreasonable circumstances is not defined by any law
	subsection (4) (a)		subject to wrong interpretation and hence might be used to violate the right to information
	Section (5) subsection (4) (b)	Remove Confidentiality requirements	These requirements will limit the right to information and hence they should be done away with.
	Section (5) subsection (5)	The nature and extent should be removed	This is ambiguous and not specified in any law or regulations and might be used to deny public information.
	Section (8) sub section (3)	Remove the limitations by the nature and extent specified under this section	The nature and extend is not defined anywhere hence it an ambiguous and an hindrance to the right to freedom of expression
		The bill does not have redress mechanism and we recommend a whole section to be included	This should be included if any of the procedures is violated it can be corrected before the next procedure is taken. This will reduce petitions or ligation which occurs after the whole public participation process is undertaken. This will reduce costs and time spend on petitions and litigations
		The bill is very week on feedback and we recommend a whole section to be included	This will ensure validation, review, monitoring and evaluation of the process of public participation



## General Comments

1. Civic Education is one of the major National and County Government functions as stipulated in the Constitution and the County Government Act. Civic education is not mentioned anywhere in the bill. It is our considered view that civic education precedes any bill set for public participation, hence we recommend a whole part of the bill to include civic education and budget allocation on it. This will make the people participate in meaningfully in the public participation process.
2. Outline a linkage between other Acts and this Bill such as role of Public Participation in the PFM Act
3. Alongside this Bill, other legal frameworks such as the Draft Public Participation Policy 2018 should be harmonized

The bill still lacks clear measurement variables for the following key issues: We recommend inclusion of schedule with the threshold of the following variables

No.	Variable	Measurable Threshold	Indicators	
1.	Minimum standards comprises adequate, effective and meaningful participation especially at the community level	Attendance at ward level meeting	500 people	
		Attendance at sub-county level meeting	2,000 people	
		Attendance at County level meeting	8,000 People	
2.	Inadequate framework for ensuring the effective participation and involvement of the relevant stakeholders, marginalized, vulnerable and minority groups in county governance and development	Letters of invitations to all stakeholder categories ( CSOs, private sector, NGOs, women, youth, MSEs, Trade Unions, FBOs, Squatters, etc)	At least 10 invitation letters to 10 categories of stakeholders	
		Submission of memorandums	At least 10 memorandums from 10 categories of stakeholders	
3.	Inadequate safeguards of public interest in public participation processes	No. of views or memorandums submitted	At least half of the public views submitted are incorporated in the final document	
4.	Inadequate complaint handling, reporting & feedback mechanisms	Validation meetings are held	For every public hearing a validation meeting is held to ensure view are incorporated and if not included, reasons and justification is provided in writing and verbal	

## Additional sections:

1. **Include a section** after the title section regarding Public participation and related rights and Duty of both National and County Governments their Responsibilities of County and Decentralized Units (CoK Articles 176 (2), 184 and 186 & 4, Schedule Part 2 (14), 187and 189, CGA Section 48, UA&C Act 2011 - Urban (city, municipality, town and market) units, Sub County, Ward, Village units)

2. **Include a schedule:** on Inter-Governmental and Inter-Agency Coordination defining the roles which include Kenya national commission of human rights, Kenya Communication Authority, Inter-Governmental Relations Technical Committee (IGTRC), NGO coordination board, Commission of Administrative Justice, (CAJ), Ministry of Interior and National Coordination etc. This will define their roles and linkages to public participation and civic education.
3. **Include a schedule** on: Notification procedures: This should be 21 day notice for all public participation hearings with all adequate information released together with the Notification
4. **Include a schedule:** on Protection for persons (whistle-blowers) who may disclose or release information in good faith that they reasonably believe, at the time of disclosure, to be true and of public interest against legal, administrative or disciplinary sanctions.

### **Conclusion**

We hope that you will review, address, and include our concerns raised in this memo.

We also anticipate a published report of this exercise on the same.

**Yours faithfully,**



**Dr. Margaret Lubaale**  
Executive Director, ED

Health NGO's Network (HENNET)  
AMREF KCO, along Wilson Airport, Off Langata Road  
Address: P.O Box 30125-00100, Nairobi, Kenya  
Email: [director@hennet.or.ke](mailto:director@hennet.or.ke) | [admin@hennet.or.ke](mailto:admin@hennet.or.ke) | [programs@hennet.or.ke](mailto:programs@hennet.or.ke)  
Phone: +254796785973+254792906273  
[www.hennet.or.ke](http://www.hennet.or.ke) | [Twitter@HennetKenya](https://twitter.com/HennetKenya) | Facebook: @Hennet17.Kenya

This memo is submitted on behalf of Registered HENNET Member Organizations