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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION

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DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

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REPORT ON THE CONSIDERATION OF THE PUBLIC PARTICIPATION BILL (NO.

2) BILL (NATIONAL ASSEMBLY BILLS NO. 71 OF 2019) BY HON. CHRIS

WAMALWA, MP

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 18 AUG 2021	
DAY: <input type="text"/>	
TABLED BY:	HON. WAMBUGU MUNENE for CHAIR.
CLERK-AT THE-TABLE:	<i>Amana MUSA...</i>

DIRECTORATE OF DEPARTMENTAL COMMITTEES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

AUGUST, 2021

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## **LIST OF ABBREVIATIONS AND ACRONYMS**

EMCA	Environmental Management and Coordination Act
NGAAF	National Government Affirmative Action Fund
TISA	The Institute for Social Accountability

## **ANNEXTURES**

Annexure 1 - Report adoption list

Annexure 2 - Minutes of the Committee

Annexure 3 - Public participation advertisements in the local dailies



## **CHAIRPERSON'S FOREWORD**

The Public Participation (No. 2) Bill, 2019 (*National Assembly Bills No. 71 of 2019*), sponsored by Hon. Chris Wamalwa, MP, Member for Kiminini Constituency, was published on 11th October 2019 and read a first time on 30th October 2019.

The Bill has the principal purpose of giving effect to Articles 10(2)(a), 69(1)(d), 118, 174(c), 184(1)(c), 196(1)(b), 201(a) and 232(1)(d) of the Constitution regarding public participation. The Bill further seeks to establish a legal framework, the parameters for public participation and defines the obligations of state organs and public offices in conducting public participation. The Bill also seeks to enhance public participation by creating a framework for informed, effective and efficient engagement of the public in decision making processes.

The Committee held several meetings to consider the Bill, analyse the submissions from stakeholders and finalize this report.

The Committee conducted public participation on the Bill pursuant to the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3) and received responses from eight stakeholders. These were Commission on Administrative Justice; Council of County Governors; Institute of Social Accountability; Kenya Law Reform Commission; Natural Justice; National Gender and Equality Commission; Sauti ya Wanjiku Organisation; and Sauti ya Wakenya Tusaidiane Group.

I on behalf of the Committee wish to express gratitude to stakeholders for their input and valuable contributions during consideration of the Bill. I also take this opportunity to thank the Offices of Speaker and Clerk of the National Assembly for the technical support accorded to the Committee during the exercise. Finally I wish to express appreciation to Committee Members for their resilience and devotion to duty as well as the secretariat for exemplary performance in serving the Committee. Their incredible efforts made consideration of the Bill and production this report successful.

On behalf of the Departmental Committee on Justice and Legal Affairs and the provisions of Standing Order 199(6), it is now my pleasant duty to table the Report of the Committee on the consideration of Public Participation (No. 2) Bill, 2019 (*National Assembly Bills No. 71 of 2019*).

**Hon. Clement Muturi Kigano, M.P**

**Chairperson, Departmental Committee on Justice and Legal Affairs**

## CHAPTER ONE

### 1.0 PREFACE

#### 1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is established under Standing Order 216 whose mandate pursuant to the Standing Order 216 (5) is as follows;
  - a. *Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
  - b. *Study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
  - c. *Study and review all legislation referred to it;*
  - d. *Study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
  - e. *Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
  - f. *Vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
  - (fa) *examine treaties, agreements and conventions;*
  - g. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
  - h. *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
  - i. *Examine any questions raised by Members on a matter within its mandate*

#### 1.2 Committee Subjects

2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-
  - (a) Constitutional affairs;
  - (b) The administration of law and Justice
  - (c) The Judiciary;
  - (d) Public prosecutions;
  - (e) Elections;
  - (f) Ethics, integrity and anti-corruption; and
  - (g) Human rights.
3. The Committee has overall mandate over all matters relating to Political Parties under the office of the Registrar of Political Parties.

### 1.3 Committee Membership

4. The Departmental Committee on Justice and Legal Affairs was constituted in December 2017 and comprises of the following Members-

**Chairperson**

Hon. Clement Muturi Kigano, M.P

**Kangema Constituency**

**Jubilee Party**

**Vice-Chairperson**

Hon. Tom Joseph Kajwang, M.P

**Ruaraka Constituency**

**ODM Party**

Hon. John Olago Aluoch, M.P.  
**Kisumu West Constituency**  
**FORD-Kenya**

Hon. George Peter Kaluma, M.P.  
**Homa Bay Town Constituency**  
**ODM-Party**

Hon. Roselinda Soipan Tuya, M.P.  
**Narok County**  
**Jubilee Party**

Hon. Junet Sheikh Mohammed, M.P.  
**Suna East Constituency**  
**ODM-Party**

Hon. Emmanuel Wangwe, M.P.  
**Navakholo Constituency**  
**Jubilee-Party**

Hon. W. Kamoti Mwamkale, M.P.  
**Rabai Constituency**  
**ODM-Party**

Hon. Josephine Naisula Lesuuda, M.P.  
**Samburu West Constituency**  
**KANU-Party**

Hon. Zuleikha Hassan, M.P.  
**Kwale County**  
**ODM-Party**

Hon. Jennifer Shamalla, M.P.  
**Nominated MP**  
**Jubilee Party**

Hon. Robert Gichimu Githinji, M.P.  
**Gichugu Constituency**  
**Jubilee-Party**

Hon. Anthony Oluoch M.P.  
**Mathare Constituency**  
**ODM-Party**

Hon. John Munene Wambugu, M.P.  
**Kirinyaga Central**  
**Jubilee -Party**

Hon. George Gitonga Murugara, M.P.  
**Tharaka Constituency**  
**Democratic Party (DP)**

Hon. Anthony Githiaka Kiai, M.P.  
**Mukurueni Constituency**  
**Jubilee-Party**

Hon. John Kiarie Waweru, M.P.  
**Dagoretti South Constituency**  
**Jubilee-Party**

Hon. Japheth Mutai, M.P.  
**Bureti Constituency**  
**Jubilee-Party**

Hon. Adan Haji Yussuf, M.P.  
**Mandera West Constituency**  
**Economic Freedom Party**

**1.4 Committee Secretariat**

5. The secretariat comprises –

Mr. Abenayo Wasike  
**Principal Clerk Assistant**  
**Lead Clerk**

Mr. Denis Abisai  
**Deputy Director**

Ms. Halima Hussein  
**Clerk Assistant II**

Dr. Donald Manyala  
**Research Officer II**

Mr. Omar Abdirahim  
**Fiscal Analyst III**

Ms. Roselyne Ndegi  
**Serjeant-at-Arms I**

Ms. Noelle Chelagat  
**Media Relations Officer III**



## CHAPTER TWO

### 2.0 OVERVIEW OF THE PUBLIC PARTICIPATION (NO. 2) BILL, 2019

#### 2.1 Salient features of the Public Participation (No. 2) Bill, 2019

6. The Public Participation (No. 2) Bill, 2019 (National Assembly Bills No. 71 of 2019), sponsored by Hon. Chris Wamalwa, M.P, Member for Kiminini Constituency, was published on 11<sup>th</sup> October 2019 and read a first time on 30<sup>th</sup> October 2019.
7. The Public Participation (No. 2) Bill, 2019 (National Assembly Bills No. 71 of 2019) has the principal purpose of giving effect to Articles 10(2)(a), 69(1)(d), 118, 174(c), 184(1)(c), 196(1)(b), 201(a) and 232(1)(d) of the Constitution regarding public participation.
8. The Bill further seeks to establish a legal framework, the parameters for public participation and defines the obligations of state organs and public offices in conducting public participation. The Bill also seeks to enhance public participation by creating a framework for informed, effective and efficient engagement of the public in decision making processes.
9. **Part I** of the Bill is on preliminary provisions.
10. **Part II** of the Bill sets out the principles governing public participation, obligations of state organs and public offices in conducting public participation, the role of the National Assembly and the Senate in conducting public participation, the rights of a member of public in public participation and designates public participation officers.
11. **Part III** of the Bill provides for public participation forum. **Clause 10** provides for the period within which the forum shall be conducted, the manner, matters to be discussed and persons who may be included. **Clause 11** provides for notification of public participation fora. **Clause 12** provides for various communication mechanisms that may be used to disseminate information. Clause 13 provides for affirmative action programmes in public participation.
12. **Part IV** of the Bill provides for miscellaneous provisions.

## CHAPTER THREE

### 3.1 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

13. Pursuant to Standing Order 127(3) of the National Assembly Standing Orders, Committees of the House are obligated to facilitate public participation on Bills through appropriate mechanisms including-
- (a) Inviting submission of memoranda;
  - (b) Holding public hearings;
  - (c) Consulting relevant stakeholders in the sector; or
  - (d) Consulting experts on technical subjects.
14. Public participation is a constitutional imperative flowing from Article 118 of the Constitution which provides that Parliament shall-
- (a) conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and*
  - (b) facilitate public participation and involvement in the legislative and other business of Parliament and its committees.*
15. Pursuant to the provisions of Article 118(1) (b) of the Constitution and Standing Order 127(3), which provide that the Parliament shall facilitate public participation, the Committee placed an advert in the local dailies on 11<sup>th</sup> November, 2019 inviting the public to submit their views to through the Office of Clerk of the National Assembly.
16. The following stakeholders submitted their comments on the Bill:
- (a) Commission on Administrative Justice;
  - (b) Council of Governors
  - (c) Institute of Social Accountability;
  - (d) Kenya Law Reform Commission;
  - (e) Natural Justice;
  - (f) National Gender and Equality Commission;
  - (g) Sauti ya Wanjiku Organisation;
  - (h) Sauti ya Wakenya Tusaidiane Group.
17. In processing the Bill, the Committee took into account all the memoranda received from the public and its deliberations.

#### 3.1.1 SPECIFIC COMMENTS

##### Long title

18. **The Council of County Governors** recommended that the long title be amended by deleting Article 69(1) (d) and Article 184(1) (c). In their justification, they stated that Article 69(1) should be deleted since it provides about “encourage public participation in the management, protection and conservation of the environment”. Further, Article 184(1) (c)



provides for “providing for participation by residents in governance of urban areas or cities”. These should be deleted since nothing in the Bill provides for any of these. In the alternative, they proposed that Article 69(1) could be retained but provisions of participation as elaborated in the Environment Action Plan in the EMCA, 2015 should be included. Further, Article 184 (1) (c) could be retained but provisions of participation as elaborated in the Urban Areas and Cities Act should be included in the Bill.

#### **Committee observations and recommendations**

19. The Committee agreed to the proposed amendment and recommended further that all references to the Articles of the Constitution should be deleted.

#### **Clause 2**

20. **The National Gender and Equality Commission** proposed that clause 2 should be amended by inserting the definition “Affirmative Action Fund”. They further proposed that the Committee should adapt the definition provided by the National Government Affirmative Action Fund (NGAAF).

#### **Committee observations and recommendations**

21. The Committee was of the view that the proposed insertion of the definition “Affirmative Action Fund” required a corresponding provision in the Bill providing for it. Further, the Committee noted that the stakeholder had not given justification for the proposed definition.

#### **Clause 4**

22. **Natural Justice** observed that object and purpose of the Bill is narrow. They proposed that the framework should be broadened to include the following: “*Identify the conditions required to make the participation process credible and to maximize interest and commitment from the stakeholders.*” In their justification, they stated that public participation is a critical social accountability mechanism. It enables citizens hold state institutions accountable and responsive to their needs. By their very nature, public participation implies that the public’s contribution will influence a decision. Therefore, they recommended that strong emphasis should be placed on the adequate conditions for effective participation including transparency, accountability, among others.
23. **The Institute for Social Accountability** proposed that clause 4(a) should be amended to include both Articles 1 and 174 of the Constitution to holistically represent all the rights that citizens have in regard to participation in the decision-making process. They further proposed an amendment to include
  - (a) A clear guideline with a structure and process. Having clear rules that are set when defining how the process should be concluded, the tools and how decisions are made;
  - (b) Access to information should be another clear guideline; citizens are entitled to public information;



- (c) The commitment to process whether the responsible authorities are willing to obtain and consider public inputs;
- (d) Transparency that the information is shared widely and is provided for in a timely manner.

24. In their justification, they stated that the provision does not encompass the sovereign power of the people of Kenya and ignores the powers of self-governance bestowed onto the citizens. Further, they stated that the Constitution of Kenya under the objects and principles of devolved government under Article 174 give powers of self-governance to the people and enhance their participation in the exercise of the powers of the State in making decisions that affect them while recognizing the powers of the communities to manage their own affairs and to further their own development. They indicated that Article 1 of the Constitution states all sovereign power belongs to the people of Kenya.

#### **Committee observations and recommendations**

25. The Committee observed that clause 4 of the Bill provides that the object and purpose of the Act is to provide a framework for the involvement of the public in the process of decision making by state organs and public office; and informed, effective and efficient engagement of the public in decision making.
26. The Committee was of a different view that the proposed additional object by Natural Justice was catered for broadly in clause 4 as provided for in the Bill.
27. The Committee further observed that Article 1 of the Constitution provides for the sovereignty of the people whereas Article 174 provides for the objects of devolution.
28. Clause 4 of the Bill does not need to specifically mention Article 1 and 174 of the Constitution. In fact, the objects and purposes of the Bill address the concerns raised by the Institute for Social Accountability. In any case, the proposed amendment should be to other provisions other than the applications clause.

#### **Clause 5**

29. **Natural Justice** proposed that **clause 5(a)** should be amended to include the words "*accurate, complete*" access to information relating to the public offices and state organs policy formulation and implementation. They proposed that the clause should therefore read as follows: "*(a) The need to provide accurate, complete and timely access to relevant information relating to the public offices and state organs policy formulation and implementation.*"
30. In their justification, they stated that in order to facilitate effective public participation, timely access to information may not be adequate in itself. They suggested that it was important and necessary that in addition to being timely, the information disseminated should be accurate, complete, relevant and in formats and mechanisms that are easy for all to access, understand and to use or re-use.

#### **Committee observations and recommendations**

31. The Committee agreed to the proposed amendment partly: the proposed insertion of the word “accurate” was adopted whereas the word “complete” was rejected as it was repetitive.
32. Further, the Committee recommended that paragraph (a) be amended by deleting the words “relating to public offices and state offices and state organs policy formulation and implementation” and substituting therefore the words “regarding the matter at issue”.
33. Natural justice proposed that clause 5(h) should be amended by inserting the words “the minorities and marginalised groups” immediately after the words “persons with disabilities” and therefore to read as follows: “(h) *the participation of the women, youth, persons with disabilities and the minorities and marginalised groups.*”
34. The stakeholder justified their proposed amendment by stating that Article 56 of the Constitution gives a special mention to the marginalised groups and minorities and requires the State to put in place affirmative action programmes designed to ensure that this group participates and are represented in governance and other spheres of life. They indicated that the mention of this special interest group is because of the historical context. The marginalised communities and minorities have been excluded from both mainstream decision-making and implementation processes of development interventions. To comply with this constitutional provision, the Bill should also include the minorities and marginalised groups so as to guarantee the protection of their interests.
35. **The National Gender and Equality Commission** proposed that clause 5(h) be amended to include all the Special Interest Groups: Children, Older persons and minorities and marginalised groups who had been left out in the Bill.
36. In their justification, they stated that all the special interest groups have their rights of participation entrenched in Article 100 of the Constitution and other specific articles under the bill of rights. Further, Section 4(4) of the Children Act provides for the rights of children to be heard. In any matters of procedure affecting a child, the child shall be accorded an opportunity to express his opinion and that opinion shall be taken into account as may be appropriate taking into account the child’s age and the degree of maturity.

#### **Committee observations and recommendations**

37. The Committee agreed with the stakeholders in principle to have all special interest groups represented. It recommended that clause 5(h) be amended to provide for “special interest groups” and to define the term in clause 2 to correspond to the meaning assigned to it in Article 100 of the Constitution. However, in relation to children, the definition should clarify by mentioning children “*but to the extent that the matter concerns them*”.
38. The Committee’s justification for its recommendation were that; firstly, it is important to provide for inclusion of all special interest groups within the ambit of the public participation principles to prevent discrimination. Secondly, Article 56 of the Constitution obligates the State to put in place affirmative action programmes designed to ensure that minorities and marginalised groups.



## Clause 6

39. **The National Gender and Equality Commission** proposed that clause 6 be amended by inserting the following phrase immediately after the word “processes”: *“And that public participation forums comply with the two-thirds gender principle”*.
40. In its justification, the Commission stated that the proposed insertion will ensure balanced public participation and collection of views based on gender perspectives and contribute towards recognising the role of women in contributing to governance and decision making.
41. The Commission further proposed that the clause should be amended to include all the special interest groups in the list. They also proposed that information on public participation is tailored to meet the needs of persons with disabilities, older members of the society, and other groups with special needs in regards to the principle of participation.
42. In their justification, the Commission stated that the proposed amendment will promote the rights of special interest groups.
43. **The Institute for Social Accountability (TISA)** proposed that **clause 6(e)** be amended to include that the consultation document will be availed to the public fourteen days prior to the public participation forum and submissions of written memoranda.
44. In their justification, TISA stated that there should be a requirement on what exactly the clear and reasonable timeline is. Leaving it to the discretion of State organs and public offices will not allow for effective participation.
45. **TISA** also proposed that **clause 6(g)** be amended to include that the funding for civic education will be no less than 2 per centum.
46. TISA’s justification was that civic education is important and as such there should be a minimum requirement on how much should be allocated to conduct it.
47. **TISA** further proposed that **clause 6(j)** be amended to provide that where the published notices will be published, then this should be done through State organs and public offices website, newspapers, online and traditional media and radio. Further, they proposed that the notices should be availed to the public twenty one days prior to the conduct of forum.
48. TISA’s justification was that there should be a requirement on where the notices will be published. It should be made available on the State organs and public offices website, newspapers, online and traditional media and radio. The provision should also include a requirement on timelines for the published notices.
49. **TISA** proposed that **clause 6(k)** be amended by deleting the word “reasonable” and instead provide a specified timeline of twenty one days.
50. TISA’s justification for the proposed amendment was that there is lack of clarity around what is considered reasonable. There is need for clarification on what it means exactly. There is also need for specified timelines beyond ‘reasonable’.

51. **Natural Justice** proposed that **clause 6(k)** be amended to provide for a reasonable timeline within which decisions are to be communicated to the general public. The clause should therefore read as follows: “*(k) ensure that public input is analysed and the decision made is communicated to the public including a summary of the input made and the reasons for the decisions within reasonable timelines but not later than thirty (30) days from the date of the decision.*”.
52. Their justification was that Article 47 of the Constitution of Kenya provides for a right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. They further stated that this is a set of moral norms, values and principles aimed at protecting the citizenry. Prescribing timelines is important because it provides a measure to advance and defend its right.
53. **Natural Justice** proposed that under **clause 6(e)**, there was a need to establish and define reasonable timelines for public involvement.
54. The justification by Natural Justice for the proposed amendment was that public participation should be real. The yardstick for public participation is that a reasonable opportunity is given to the members of the public and all interested parties to know about the issue and to have an adequate say.
55. **Natural Justice** proposed that **clause 6(g)** be amended by deleting the word “enhance” and replacing it with “facilitate effective”. It should read as follows: “*(g) ~~enhance~~ facilitate effective public participation through civic education for purposes of creating an enlightened and empowered citizenry.*”
56. Natural Justice’s justification for the proposed amendment was that the term “enhance” is loose and relative. It is not measurable and can be subject to abuse. Further, it should be mandatory that civic education is conducted at different stages of public participation to build the capacity of citizens to participate. Civic education must always precede public participation.
57. **Natural Justice** proposed that **clause 6(m)** be amended to include the words “accurate, complete” access to information by the public on the subject matter under deliberation and the issues to be addressed. The clause should therefore read as follows: “*(m) ensure accurate, complete and timely access to information by the public on the subject matter under deliberation and the issues to be addressed.*”
58. Their justification was that the public should be supported in their will to participate by providing relevant information that is accurate and complete, and in formats and mechanisms that are easy for all to access, understand and to use.

#### **Committee observations and recommendations**

59. The Committee agreed to the proposed amendment by the National Gender and Equality Commission in regard to the proposed inclusion of special interest groups but rejected the proposed insertion of following phrase immediately after the word “processes”: “*And that public participation forums comply with the two-thirds gender principle*”. The Committee



noted that the requirement will not be tenable since it will not be within the control of a state organ or public office.

60. The Committee observed that clause 6 provides for the obligations of a state organ or public office in conducting public participation. Specifically, clause 6(e) provides for the obligation to ensure that clear and reasonable timelines are established for public involvement at every stage of decision making and inform the public on the timelines.
61. The Committee rejected the proposed amendment to clause 6(e) by TISA for the following reasons:
  - (a) Providing for timelines might be counter-productive since circumstances vary;
  - (b) The proposed requirement that the consultation document be availed to the public fourteen days prior to the public participation forum and submission of written memoranda might not be feasible.
62. The Committee rejected the proposed amendment by TISA to amend clause 6(g) for the following reasons:
  - (a) The proposed amendment to indicate the percentage of funds to be used in public participation is not tenable and is too prescriptive. It might not be feasible;
  - (b) The proposal does not specify what “not less than 2%” is in relation to.
63. In regard to the proposed amendment to clause 6(j) by TISA, the Committee observed that the provision makes a cross-reference to clause 10 of the Bill which provides for the details of conducting public participation forum. The Committee further observed that clause 11 provides for the various mechanisms of publishing notices. Therefore, the proposed amendment should have been to clause 11. Also, the Committee observed that the timeline of twenty one days has also been provided for in clause 11, although the Committee recommends that the timeline be removed altogether.
64. In regard to the proposed amendment to clause 6(k) by TISA, the Committee observed that the proposed amendment seeks to provide for a timeline of twenty one days to communicate decisions arising from public participation conducted. The challenge of prescribing specific timelines is that it might not be feasible in certain circumstances. Thus, the Committee rejected the proposed amendment.
65. In regard to the proposed amendment to clause 6(k) by Natural Justice, the Committee was of the view that the challenge with prescriptive timeline is that it might not be feasible in certain circumstances. The Committee rejected the proposed amendment. The Committee recommended that the word “analyzed” be deleted and substituted with the word “considered”.
66. In regard to proposed amendment to clause clause 6(e) by Natural Justice, the Committee was of the view that providing for timelines might be counter-productive since circumstances vary. The Committee recommended that the paragraph as provided in the Bill be retained.

67. In regard to the proposed amendment to clause 6(g) by Natural Justice, the Committee rejected the proposed amendment and recommended that the word “public” be inserted immediately after the word “enhance”. The Committee noted that the paragraph’s emphasis is civic education.

68. In regard to the proposed amendment to clause 6(m) by Natural Justice, the Committee agreed to the proposed amendment partly: the proposed insertion of the word “accurate” was adopted whereas the word “complete” was rejected as it was repetitive.

#### **Clause 7**

69. **Natural Justice** proposed that clause 7 be amended to make clear the intent.

70. Their justification was that the wording of the clause is ambiguous and subject to many interpretations. It is unclear whether it enhances the participation of the public or whether it locks them out by giving their representatives the power to speak on their behalf and thereby creating an assumption that such views are a general representation of the constituents.

#### **Committee observations and recommendations**

71. The Committee agreed with the stakeholder to the extent that the clause needed to be amended.

72. The Committee recommended that the clause be deleted and substituted with the following:

Public participation by Parliament.	7. Parliament shall facilitate public participation and involvement on matters under deliberation before either House as prescribed in the Standing Orders.
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73. The Committee’s justification for the deletion and replacement of clause 7 was that—

- (a) The clause is problematic because the provision could be construed to mean that public participation in Parliament could only be done through constituencies and county assemblies.
- (b) Parliamentary committees conduct public participation. It would appear that their activities would be forestalled if the provision is retained as it is.
- (c) The Standing Orders provide for public participation by Parliament and can be easily amended unlike a statute.

#### **Clause 10**

74. **The National Gender and Equality Commission** proposed that clause 10 be amended to include the full list of all special interest groups and conditional compliance with the two thirds gender principle in Article 28. A state organ or public office shall convene a public participation forum, ensure that the forum is fully publicised to enable the attendance and participation of a wide section of the public, including the women, youth, minorities and marginalised groups, older persons and children and ensure that the forum composition complies with the two-thirds gender principle.



75. The Commission's justification was that this will ensure participation from all the categories of special interest groups. It will also ensure the progressive participation of women in governance and decision making particularly so in patriarchal societies thereby progressively eliminating the exclusion of women in governance and decision making.
76. **The National Gender and Equality Commission** proposed that clause 10 (2) be amended by inserting the following paragraphs—
- (e) convene the public participation meetings in an accessible venue;
  - (f) ensure the presence of Sign Language Interpreters in all public participation meetings;
77. The Commission's justification was that the proposed amendment will promote accessibility and inclusivity for all special interest groups and will ensure that public participation forums are compliant with the requirement of two-thirds gender principle.
78. **The Institute for Social Accountability** proposed that clause 10(2) (b) be amended to include that the notice will be posted on websites, online communication platforms, traditional media, public announcements (church, chief, barazas) radio and other forms of relevant communication.
79. **Natural Justice** proposed that clause 10(2) be amended by inserting paragraph (e) to require the secretary to collate written submissions for onward transmission to the relevant state organ or public office.
80. Their justification was that clause 8 of the Bill provides that a member of the public has a right to attend public participation and make presentations either orally or by way of written submission. In order to maintain this consistency, the role of the secretary for the forum should include collating written submissions for onward transmission to the relevant state organ or public office.
81. **Natural Justice** proposed that clause 10(4) (c) be amended by inserting paragraph (v) providing for marginalised groups and minorities.
82. Their justification was that to comply with the constitutional provisions of Article 56, the Bill should also include the minorities and marginalised groups so as to guarantee the protection of their interests. Further, this is to ensure that there is consistency across the Bill.
83. **The National Gender and Equality Commission** proposed that clause 10(4) be amended since the list of special interest groups missing are: Minorities and marginalised groups, older members of society and children. The Commission further proposed that clause 10 (4) (c) be amended to include Disability-based organisations.
84. The Commission's justification was that this will ensure inclusivity for all groups.

#### **Committee observations and recommendations**

85. The Committee recommended that clause 10(2), (3) and (4) be deleted.
86. The Committee's justifications were that—



- (a) the subclauses are over-prescriptive which will hinder effective public participation;
- (b) the subclauses have a financial implication which will make conduct of public participation expensive; and
- (c) subclauses (1) and (5) which the Committee recommends that they be retained are sufficient.

### **Clause 11**

87. **Natural Justice** proposed that clause 11(1) (c) should be deleted.
88. Their justification was that clause 11 (1) (c) refers to mechanisms for dissemination of information referred to under section 12. However, section 12 (or otherwise referred to as clause 12) is titled “affirmative action programmes” therefore has nothing whatsoever to do with the notification.
89. **Natural Justice** also proposed that clause 11(1) should be amended to provide for an additional paragraph to provide for the “Kenya Gazette” as the other mechanisms for notification of public participation.
90. The justification for the proposed amendment was that the Kenya Gazette is the official channel of communication by the government. Besides publishing notices of new legislation and notices required to be published by law or policy, it also publishes announcements for general public information.

### **Committee observations and recommendations**

91. The Committee recommended that the clause be deleted and substituted with the following new clause—

Notification of public participation  
fora.

**11.** Where a public participation forum is convened, a state organ or public office shall ensure that there is sufficient notice to the public.

92. The justification for the Committee’s proposed amendment was that the mechanisms of placing public participation notice should not be spelt out in the Bill but be left to the discretion of a state organ or public office.

### **Memorandum of objects and reasons**

93. **The Council of County Governors** observed that there was no clause 12. They proposed that this should be inserted in the Bill to read:

Publish and publicize in the most effective medium of communication in terms of reach and cost. Such mediums may include: Television; newsletters; information communication technology; mass mailing; websites; social media (Facebook, Twitter, LinkedIn, Instagram

among others); Community radio stations; public meetings; traditional media; and notices in offices, places of worships, markets, schools, libraries, social clubs, medical facilities and county government offices.

### **Committee observations and recommendations**

94. The Committee noted that contrary to the claim by the Council of County Governors that the Bill did not have clause 12, there was indeed one. Further, the Committee had recommended that clause 11 be amended to delete the various mechanisms of notices of public participation.
95. The Committee was of the view that the mechanisms of placing public participation notice should not be spelt out in the Bill but be left to the discretion of a state organ or public office.
96. The Committee further recommended that clause 12 be amended by replacing “marginalised groups” with “special interest groups” and to delete the words “relating to public offices and state organs”.

### **3.1.2 GENERAL COMMENTS**

97. The Committee also received general comments from stakeholders. These comments did not propose specific amendments to various clauses of the Bill.

#### **I. KENYA LAW REFORM COMMISSION**

98. The Kenya Law Reform Commission supported the Bill indicating that it was tenable. The Commission stated that public participation is a key component in achieving and actualizing democracy and devolution in Kenya. The Bill has clearly set out the principles governing public participation, obligations of state organs and public offices in conducting public participation, the rights of a member of public in public participation. The Bill has further provided for public participation forums and various communication mechanisms to disseminate information. The Commission comprehensively set out the legal framework for public participation in Kenya.

#### **II. NATIONAL COUNCIL FOR ADMINISTRATION OF JUSTICE**

99. The National Council for Administration of Justice submitted as follows:

##### **Specificity of processes and mode of public participation**

100. The Constitution of Kenya provides for public participation as a national value and principle of governance. Public participation as a principle binds all state organs, state officers, public officers and all persons whenever they are applying or interpreting the Constitution, the law or making public policy decisions. Whereas the Bill should provide for general principles applicable to public participation, it should also make provision for the procedures and modes to be followed when conducting public participation for specific areas mentioned in the Constitution which requires public participation. These are:
  - (a) Obligations in respect of the environment (*Article 69(1) (d)*)



- (b) Public access and participation in legislative and other parliamentary business (*Article 118*)
- (c) Exercise of powers of the State and decision making process (*Article 174*) (c))
- (d) Public participation in County Assembly Business (*Article 196*)
- (e) Public participation in financial matters i.e. taxation, sharing of revenue expenditure, sharing of burdens and benefits of the use of resources & financial management (*Article 201*)

101. The Bill should specify the public participation procedures to be followed in the above cited areas and the applicable timelines and modes since they may vary. Further, it is our view that the said provisions should be divided into parts immediately after Part 1 which provides for the preliminary, with each head having its own part for ease of reference and clarity on the mode of public participation to be adopted.

#### **Public participation on treaties**

102. Article 2(6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution. This may pose a challenge when the country ratifies treaties or conventions that bind the country without proper consultation. This Bill being the envisaged law on public participation, should provide in detail how public participation for treaties and conventions intended to be ratified should be conducted. The provisions of the Treaty Making and Ratification Act (No. 45 of 2012) are not adequate in relation to public participation and therefore should be provided in this legislation.

#### **Transparency in public participation processes**

103. To enhance transparency and accountability, the Bill should make provision for publishing and publicizing on its website relevant literature considered and received in a public participation exercise and outcomes thereof. Provision should be made for a public entity to make available:
- (a) Relevant literature that may inform on the subject of participation in order to elicit meaningful proposals;
  - (b) Oral presentations reduced to writing;
  - (c) Written memoranda received;
  - (d) The procedure of dealing with the proposals received and in particular their evaluation, technical processing, publication and archiving so as to allow for their inspection;
  - (e) Reports and/or minutes of a public participation exercise giving particulars of the venue, date and presentations made;
  - (f) (Video and audio recordings of the public participation proceedings if at all.

#### **Omnibus Bills**

104. Provision should be made for certain categories of omnibus bills to be subjected to public participation for example in cases where an Amendment Bill results in a shift of public policy or concerns a matter of public interest, it should be subjected to public participation. This would avoid situations where there is a shift in public policy occasioned through amendments which have not gone through public participation.

### **Petition for review of decisions**

105. Provision should be made for a specific State organ being made responsible for receiving the petitions for review from persons aggrieved by a decision of a State organ which has conducted a public participation exercise. It should be clear to citizens where they can go for redress and it should not be left open for a member of the public to wonder where they should complain. This will also obviate disagreements on which institution has jurisdiction to hear the petitions. Provision should also be made defining the specific action that the said public entity may take, including ordering the concerned institution to conduct a fresh public participation exercise.

### **Validity of Decisions**

106. The Bill should provide that a decision made by a State organ without public participation be void ab initio (not invalid). Further, the Bill should in its definition of terms define the word "Decision" since not all decisions of State organs should be subjected to public participation. It should be clear the decisions that should be subjected to public participation.

### **Applicable sanctions**

107. Provisions should be made for administrative action being taken against public officers who fail to adhere to the public participation law requirements. Reliance should be placed on administrative sanctions since they are more effective than the penal sanctions which are rarely imposed due to their severity.

## **III. THE INSTITUTE FOR SOCIAL ACCOUNTABILITY**

The Institute for Social Accountability (TISA) submitted as follows:

108. The publication and publicization of the two bills originating from the same House caused mass confusion to the public. This confusion undermines effective public participation to occur. National Assembly should have explained why they have called for memoranda for two separate bills and why they are proposing two separate Bills that are speaking to the same issue. There is also lack of clarity on what happened to the Public Participation Bill that originated from the Senate.

109. The call for memoranda was done within a short timeline that does not allow for effective public participation to occur. The call for memoranda only allowed for submissions to be made within a week. It is unfair and unreasonable to expect citizens to understand and internalise the proposed Bills well enough to give an informed input.

110. They recommend that the need for one concurrent Bill that speaks to effective and transparent public participation. There also needs to be specific timelines given for when calls for memoranda need to be done. They recommended 21 days; this will allow citizens to internalise and understand the Bills well enough to respond. There should also be a



citizen version of the Bill to allow citizens to fully understand and respond to the call for memoranda.

111. While it is noted that there is currently an ongoing process to develop a national public participation policy spearheaded by the department of justice under the Office of the Attorney General, they are greatly concerned that there is a Public Participation Bill being developed in the absence of an approved national public participation policy.

112. They recommended that the public participation policy should precede the public participation legislation. The policy should inform the legislative framework of what public participation should be.

113. It has been almost 10 years since the passing of the Constitution of Kenya and there is no public participation policy or legal framework put in place. TISA also noted that Kenya is currently a member of the Open Government Partnership one of the key promises under commitment 4 of public participation calls for the development of a public participation bill therefore the enactment of this Bill is essential towards having an accountable and transparent government. However, the Bill has taken too long to enact given the timelines that were given. There has been no reason given as to why there is a delay.

114. The Public participation policy should be approved and enforced immediately, and the legislation should follow soon after. The timelines given in the Open Governance Partnership should be clearly adhered to.

#### **IV. NATIONAL GENDER AND EQUALITY COMMISSION**

115. The Commission submitted that for vulnerable groups to effectively benefit from public participation, they should be facilitated in their engagement which include:

- (a) ensuring convenors of the public participation forum support and facilitate PWDs to access documents and information e.g. mandatory sign language, interpretation services and braille, materials in large font size targeting older members of society and persons with partial vision loss, for all public participation fora;
- (b) ensuring to the greatest possible inclusion of children voices and voices of older members of societies;
- (c) have an integrated feedback mechanisms and tracking of public views given during public participation.

#### **V. COUNCIL OF COUNTY GOVERNORS**

116. The Council of Governors has recommended that the National Assembly amalgamates the Public Participation Bill (National Assembly Bill No. 71) and the Public Participation Bill (National Assembly Bill No. 69) into one comprehensive Bill as the objectives of both Bills are similar.

#### **VI. SAUTI YA WANJIKU ORGANISATION**

117. The organisation indicated that the Bill was a detailed duplication of the previous Bill, the Public Participation Bill, 2019 (National Assembly Bill No. 69 of 2019).

118. They further submitted that public participation is a core element of democratic governance devolved system. It is further embedded in the Constitution with the sole responsibility of its operation upon two levels of the governance i.e., national and county. Public participation is crucial in ensuring the protection of rights, transparency, accountability, equity, self-determination influencing decision making, effective democratic citizenship and a meaningful dialogue.

119. They recommended the following:

- (a) The concept of Public Participation Bill should be rolled out down to the 47 County Assemblies for its appropriate implementation.
- (b) Quoting Article 10(2) (a), (b) and (c), the national values and principles of governance includes democracy and participation and accountability and more so a respect to the freedom of expression of all participants.
- (c) The need to the timely access to information and reasonable access to planning and policy making process.
- (d) The need for a humble time for advertisement say at least fourteen days in the popular media house and a most conducive venue for the meeting.
- (e) Public participation should be mandatory for effective engagement by both parties.
- (f) It is noted worldwide that public participation is generally a costly affair both financially and morally in terms of time covered by the attendants. They recommend an appropriate budget for each meeting with an estimated attendance of at least one hundred people as a quorum.
- (g) There is always a budget for all key meetings at both the national and county levels of governance. They recommend a full-fledged budget for every important meeting involving the public (Wanjiku). The budget should mandatorily cover Wanjiku's logistics norms i.e. a cup of tea/soda, lunch and at least some transport to and from the venue of the meetings by all available means.
- (h) Therefore, there is need for a serious budgetary allocation in every financial year to cater for Wanjiku's logistics during public participation scaling down to some reasonable allowance to every registered participant.
- (i) As a clear reminder, Article 118 demands that Parliament facilitates public participation and involvement in its legislative work and any other business. It must be praised for enabling the public to make known their thoughts on critical matters of legislation before they are passed. But the questions go that (a) Have these forums created any significant impact? (b) Is the exercise done the right way? (c) do they have the goodwill of the lawmakers or only done to satisfy the supreme law? (d) When contributions are successfully done and captured in a given forum, who follows up to check if their views inputs have an informed decisions to the relevant Bill? (e) Who is charged with the appropriate feedback and how?

## **VII. SAUTI YA WAKENYA TUSAIDIANE GROUP**

120. The Group recommended the following:

- (a) The concept of Public Participation Bill should be rolled out down to the 47 County Assemblies for its appropriate implementation.



- (b) Quoting Article 10(2) (a), (b) and (c), the national values and principles of governance includes democracy and participation and accountability and more so a respect to the freedom of expression of all participants.
- (c) The need to the timely access to information and reasonable access to planning and policy making process.
- (d) The need for a humble time for advertisement say at least fourteen days in the popular media house and a most conducive venue for the meeting.
- (e) Public participation should be mandatory for effective engagement by both parties.
- (f) It is noted worldwide that public participation is generally a costly affair both financially and morally in terms of time covered by the attendants. They recommend an appropriate budget for each meeting with an estimated attendance of at least one hundred people as a quorum.
- (g) There is always a budget for all key meetings at both the national and county levels of governance. They recommend a full-fledged budget for every important meeting involving the public (Wanjiku). The budget should mandatorily cover Wanjiku's logistics norms i.e. a cup of tea/soda, lunch and at least some transport to and from the venue of the meetings by all available means.
- (h) Therefore, there is need for a serious budgetary allocation in every financial year to cater for Wanjiku's logistics during public participation scaling down to some reasonable allowance to every registered participant.
- (i) As a clear reminder, Article 118 demands that Parliament facilitates public participation and involvement in its legislative work and any other business. It must be praised for enabling the public to make known their thoughts on critical matters of legislation before they are passed. But the questions go that (a) Have these forums created any significant impact? (b) Is the exercise done the right way? (c) do they have the goodwill of the lawmakers or only done to satisfy the supreme law? (d) When contributions are successfully done and captured in a given forum, who follows up to check if their views inputs have an informed decisions to the relevant Bill? (e) Who is charged with the appropriate feedback and how?



## CHAPTER FIVE

### 5.0 COMMITTEE RECOMMENDATION

121. The Committee, having considered the Public Participation (No. 2) Bill, 2019 (National Assembly Bills No. 71 of 2019), recommends that the House **approves the Bill with amendments** as proposed in the schedule.

### 6.0 SCHEDULE OF PROPOSED AMENDMENTS

122. The Committee proposes the following amendments to be considered by the House in the Committee stage:

#### LONG TITLE

**THAT**, the Bill be amended by deleting the long title and substituting therefor the following new long title—

**AN ACT of Parliament to give effect to the provisions of the Constitution regarding public participation; to provide for the parameters for public participation and define the obligations of state organs and public offices in conducting public participation and for connected purposes**

#### Justification:

The proposed amendment seeks to delete all references to the provisions of the Constitution because there is no specific provision that obligates Parliament to enact a law on public participation. Further, listing the provisions of the Constitution providing for public participation is unnecessary and that there is a risk of omission of relevant articles of the Constitution.

#### CLAUSE 2

**THAT**, clause 2 of the Bill be amended by inserting the following new definitions in their proper alphabetic sequence—

“special interest group” means women, persons with disabilities, youth, ethnic and other minorities, marginalised communities and children to the extent that a matter affects children;

#### Justification:

The Bill had made reference to women, youth and persons with disabilities. However, this list was not exhaustive of special interest group which the amendment seeks to cure.

#### CLAUSE 3

**THAT**, the Bill be amended by deleting clause 3 and substituting therefor the following new clause—

Application.

**3.** This Act shall apply to all public offices, state organs and other persons in Kenya.

**Justification:**

**The amendment seeks to insert “and other persons” in order to broaden the scope of public participation since it is a constitutional obligation affecting all persons.**

**CLAUSE 5**

**THAT**, clause 5 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) the need to provide accurate and timely access to relevant information regarding the matter at issue;”

(b) by deleting paragraph (h) and substituting therefor the following new paragraph—

“(h) the participation of special interest groups in decision making processes;”

**Justification:**

**The amendment seeks to amend paragraph (a) to insert the word “accurate” in order to qualify the information given to the members of public. Further, it deletes the words “relating to public offices and state organs policy formulation and implementation” in order to clarify that the information will be in regard to matter at issue subject to public participation.**

**The amendment also seeks to delete paragraph (h) and to replace it with a new paragraph so as to substitute “women, youth and persons with disabilities” with “special interest groups”. The term special interest groups which has been proposed in clause 2 is all inclusive.**

**CLAUSE 6**

**THAT**, clause 6 of the Bill be amended—

(a) in paragraph (i) by deleting the words “under section 5”;

(b) by deleting paragraph (j) and substituting therefor the following new paragraph—

“(j) publish notices inviting the public to provide input or comments on a matter under deliberation;”

(c) in paragraph (g) by inserting the word “public” immediately after the word “enhance”;

- (d) in paragraph (k) by deleting the word “analyzed” and substituting therefor the word “considered”;
- (e) in paragraph (m) by inserting the word “accurate and” immediately after the word “ensure”;

**Justification:**

The amendment seeks to amend paragraph (i) to delete the cross-reference to section 5 which is unnecessary and inadvisable due to the challenges it poses if the legislation is to be amended in future. The amendment also seeks to amend paragraph (j) to correct a typographical error of the word “on” appearing immediately after the word “input” by replacing it with the word “or” and to delete the reference to section 10 which is unnecessary and inadvisable due to the challenges it poses if the legislation is to be amended in future. Further, the amendment also seeks to amend paragraphs (g) and (k) to bring clarity to the provisions.

**CLAUSE 7**

**THAT**, the Bill be amended by deleting clause 7 and substituting therefor the following new clause—

Public participation by Parliament.	7. Parliament shall facilitate public participation and involvement on matters under deliberation before either House as prescribed in the Standing Orders.
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**Justification:**

- (a) The clause is problematic because the provision could be construed to mean that public participation in Parliament could only be done through constituencies and county assemblies.
- (b) Parliamentary committees conduct public participation. It would appear that their activities would be forestalled if the provision is retained as it is.
- (c) The Standing Orders provide for public participation by Parliament and can be easily amended unlike a statute.

**CLAUSE 10**

**THAT**, the Bill be amended by deleting clause 10 and substituting therefor the following new clause—

Public participation forum.	<p><b>10.</b> (1) A state organ or public office shall convene a public participation forum and ensure that the forum is fully publicized to enable the attendance and participation of a wide section of the public, including special interest groups.</p> <p>(2) A public participation forum shall be open to all members of the public who desire to attend and participants shall</p>
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be allowed to speak personally or through representatives.

**Justifications:**

- (a) Subclauses (2), (3) and (4) have been deleted because they are over-prescriptive which will hinder effective public participation;
- (b) The subclauses have a financial implication which will make conduct of public participation expensive; and
- (c) subclauses (1) and (5) which the Committee recommends that they be retained are sufficient.

**CLAUSE 11**

**THAT**, the Bill be amended by deleting clause 11 and substituting therefor the following new clause—

Notification of public participation fora.

**11.** Where a public participation forum is convened, a state organ or public office shall ensure that there is sufficient notice to the public.

**Justification:**

**The mechanisms of placing public participation notice should not be spelt out in the Bill but be left to the discretion of a state organ or public office.**

**CLAUSE 12**

**THAT**, the Bill be amended by deleting clause 12 and substituting therefor the following new clause—

Affirmative action programs.

**12.** A state organ or a public office shall take affirmative measures to ensure that special interest groups participate in policy formulation including creating mechanisms to ensure that special interest groups have timely access to relevant information.

**Justification:**

**The proposed amendment replaces marginalised groups with special interest groups which is broader. Further, the amendment clarifies that the involvement of special interest groups will be to the extent of a matter that has been subjected to public participation.**

**CLAUSE 13**

THAT, clause 13 be deleted.

**Justification:**

A person who is aggrieved by a decision of a state organ or public office on any matter relating to public participation has recourse in court to challenge a decision made. Further, as drafted, clause 13 will curtail state organs or public offices in the conduct of their operations.

**CLAUSE 14**

THAT, clause 14 be deleted.

**Justifications:**

The clause usurps the jurisdiction of the courts. It is upon the courts to make a determination on whether a decision is invalid or not if it has not been subjected to public participation.

**CLAUSE 15**

THAT, clause 15 be deleted.

**Justifications:**

Providing for an offence in relation to public participation should be reconsidered and left to be an administrative matter. Further, the courts have jurisdiction to review decisions made. Further, the clause deviates from the tenets of criminal law in regard to offences for lack of specificity.

SIGNED .....  ..... DATE 18/8/2021 .....

**HON. CLEMENT MUTURI KIGANO, M.P**  
**CHAIRPERSON**  
**DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

**ANNEXURE 1**  
**ADOPTION LIST**

KENYA NATIONAL ASSEMBLY

Public Participation  
Bill, 2019

1



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ATTENDANCE REGISTER FOR MEMBERS

DATE...17/8/21..... START TIME...10:20 AM...END TIME...12:30.....

VENUE...CONTINENTAL HOUSE, 5<sup>TH</sup> FLOOR.....

AGENDA...ADOPTION OF REPORT ON PUBLIC PARTICIPATION BILL, 2019.....

NO.	NAME	SIGNATURE
1.	Hon. Clement Muturi Kigano, M.P. - <b>Chairperson</b>	
2.	Hon. T.J Kajwang, M.P - <b>Vice-Chairperson</b>	
3.	Hon. Emmanuel Wangwe, M.P.	
4.	Hon. Junet Sheikh Nuh Mohamed, M.P	
5.	Hon. John Olago Aluoch, MP.	
6.	Hon. Roselinda Soipan Tuya, MP.	
7.	Hon. Peter Opondo Kaluma, MP.	
8.	Hon. Mwamkale Kamoti, MP.	
9.	Hon. Zuleikha Hassan, MP.	

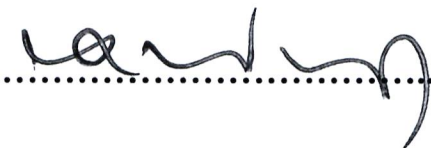


10.	Hon. Josephine Naisula Lesuuda, M.P.	Virtual
11.	Hon. George Gitonga Murugara, MP.	
12.	Hon. Adan Haji Yussuf, MP.	
13.	Hon. Japheth Kiplangat Mutai, MP.	Virtual
14.	Hon. Anthony Githiaka Kiai, MP.	Kiai
15.	Hon. Jennifer Shamalla, MP.	Shamalla
16.	Hon. John Kiarie Waweru, MP.	
17.	Hon. John Munene Wambugu, MP.	Virtual
18.	Hon. Anthony Oluoch, M.P.	Virtual
19.	Hon. Robert Gichimu Githinji, M.P	Virtual

COMMITTEE CLERK

  
.....

DIRECTOR DEPARTMENTAL COMMITTEES

  
.....

**ANNEXURE 2**

**MINUTES**



**MINUTES OF THE THIRTY SECOND SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY 17<sup>TH</sup> AUGUST, 2021 AT 10.30 AM IN COMMITTEE ROOM 5<sup>TH</sup> FLOOR, CONTINENTAL HOUSE**

**PRESENT-**

- |  |   |                         |
|--|---|-------------------------|
| 1. Hon. Clement Muturi Kigano, M.P.                      | - | <b>Chairperson</b>      |
| 2. Hon. Francis Tom Kajwang', MP                         | - | <b>Vice Chairperson</b> |
| 3. Hon. John Olago Aluoch, M.P.                          |   |                         |
| 4. Hon. Peter Opondo Kaluma, M.P.                        |   |                         |
| 5. Hon. Jennifer Shamalla, M.P.                          |   |                         |
| 6. Hon. Zuleikha Hassan, M.P.                            |   |                         |
| 7. Hon. Robert Gichimu Githinji, M.P - <b>virtual</b>    |   |                         |
| 8. Hon. Hon. Japheth Mutai, M.P.- <b>virtual</b>         |   |                         |
| 9. Hon. Anthony G. Kiai, M.P.                            |   |                         |
| 10. Hon. William K. Mwamkale, M.P                        |   |                         |
| 11. Hon. John M. Wambugu, M.P - <b>virtual</b>           |   |                         |
| 12. Hon. Anthony Oluoch, M.P.- <b>virtual</b>            |   |                         |
| 13. Hon. Josephine Naisula Lesuuda, M.P.- <b>virtual</b> |   |                         |

**ABSENT WITH APOLOGIES-**

1. Hon. Emmanuel Wangwe, M.P.
2. Hon. Junet Sheikh Nuh Mohamed, M.P
3. Hon. Roselinda Soipan Tuya, M.P.
4. Hon. George Murugara, MP
5. Hon. Adan Haji Yussuf, M.P
6. Hon. John Kiarie Waweru, M.P.

**IN ATTENDANCE-**

1. Mr. Abenayo Wasike
2. Mr. Denis Abisai
3. Mr. Salem Lorot
4. Dr. Donald Manyala
5. Ms. Halima Hussein

**COMMITTEE SECRETARIAT-**

- |   |                                    |
|---|------------------------------------|
| - | Principal Clerk Assistant          |
| - | Deputy Director, Legal Services NA |
| - | Legal Counsel I                    |
| - | Research Officer                   |
| - | Second Clerk Assistant             |

**MIN No.JLAC/ 01/2021:-**

**PRELIMINARIES**

The meeting was called to order at 10:20 am with a word of prayer from Chairperson and the agenda was adopted as filed on a proposal from Hon. Anthony Kiai and seconded by Hon. John Olago

**MIN NO.JLAC/ 02/2021:-**

**ADOPTION OF REPORTS ON BILLS**

**Public Participation (No. 2) Bill, 2019 (NA Bill No. 71 of 2019) by Hon.Chris Wamalwa.**

The committee adoption of the report on the Bill was proposed by Hon.Olago Aluoch and seconded by Hon.Anthony Kiai. The Committee recommended that the House approves the Bill with amendments as proposed in the schedule.

**The Waqf Bill, 2019 by Hon.Aden Duale, MP**

The committee adoption of the report on the Bill was deferred to allow the committee to conduct further consultations on the Bill. Members asked the Chairperson to approach the Speaker for more time to invite more stakeholders including Hon.Aden Duale, Hon.Abdulswamad Shariff Nassir and the Public Trustee.

The secretariat briefed members on the comments regarding the Bill submitted by the Jamia Mosque Committee and the Waqf Commission.

**MIN NO.JLAC/ 02/2021:-**

**ADOPTION OF REPORTS ON LEGISLATIVE PROPOSALS**

The Committee considered and adopted the following reports on legislative proposals. Members noted that they had considered and approved the legislative proposals during the Committee retreat at Windsor hotel.

The Committee unanimously adopted the reports on legislative proposals as follows;

**Child Justice Bill, 2020 by Hon Millie Odhiambo-Mabona, MP**

Committee adoption of the report was proposed by Hon.Olago Aluoch and seconded by Hon. Peter Kaluma and recommended that the Child Justice Bill, 2020 by Hon Millie Odhiambo-Mabona, MP be proceeded with for publication.

**Children Bill, 2019 by Hon Lilian Gogo**

Committee adoption of the report was proposed by Olago Aluoch MP and seconded by Hon.Peter Kaluma MP and recommended that the Children Bill, 2019 by Hon Lilian Gogo be proceeded with for publication.

**Public Appointments (Parliamentary Approval)(Amendment),Bill, 2020 by Hon Shakeel Shabir, MP**



Committee adoption of the report on Public Appointments (Parliamentary Approval)(Amendment),Bill, 2020 was proposed by Hon. Olago Aluoch,M.P and seconded by Hon.Peter Kaluma, MP and recommended that the proposal be proceeded with for publication.

**The Penal Code (Amendment) Bill, 2019 by Hon. David Gikaria, M.P**

Committee adoption of the report on Penal Code (Amendment) Bill, 2019 by Hon. David Gikaria, M.P was proposed by Hon.Olago Aluoch, M.P and seconded by Hon.Peter Kaluma, M.P and recommended that the proposal be proceeded with for publication.

**The Penal Code (Amendment) Bill, 2019 by Hon Nimrod Mbai, MP**

Committee adoption of the report on Penal Code (Amendment) Bill, 2019 by Hon.Nimrod Mbai, MP was proposed by Hon.Anthony Kiai, M.P and seconded by Hon Peter Kaluma, M.P and recommended that the proposal be proceeded with for publication.

**The Law Society of Kenya (Amendment) Bill, 2019 by Hon. Jennifer Shamalla, M.P**

Committee adoption of the report on the Law Society of Kenya (Amendment) Bill, 2019 by Hon. Jennifer Shamalla, M.P was deferred by the Committee. Members recommended republication of the legislative proposal to be sponsored by the committee.

**The Whistle Blower Protection, 2020 by Hon. Irene Muthoni Kasalu, MP**

Committee adoption of the report on the Whistle Blower Protection, 2020 by Hon. Irene Muthoni Kasalu, MP was proposed by Hon.Kamoti Mwamkale and seconded by. Hon.Jennifer Shamalla and recommended that the proposal be proceeded with for publication.

**The Elections (Amendment) Bill, 2020 by Hon.Vincent Kemosi, MP**

Committee adoption of the report on Elections (Amendment) Bill, 2020 by Hon.Vincent Kemosi, MP was proposed by Hon Peter Kaluma, M.P and seconded by. Hon. Hon.Olago Aluoch and recommended that the proposal should not be proceeded with for publication.

**MIN No.JLAC/ 03/2020: BRIEFING ON IEBC NOMINEES APPROVAL HEARING**

The Secretariat briefed members as follows'

- (i) Message from H.E the President was conveyed to the House by the Speaker on 5<sup>th</sup> August, 2021.
- (ii) Public Participation-An advert was placed in the Daily Nation and the Standard on Tuesday 10<sup>th</sup> August, 2021 for receipt of memoranda on the Bill.The period for public participation ends on 20<sup>th</sup> August, 2021.
- (iii)Pre-Approval Hearing In-House Meeting-Members resolved to meet on Monday 23<sup>rd</sup> August, 2021 at 9.00 a.m.



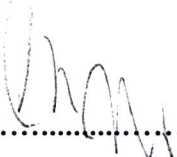
- (iv) Approval Hearings will be held on Tuesday 24<sup>th</sup> August, 2021 at 10.00 am in the Mini-Chamber, County Hall.
- (v) Adoption of Committee Report- Between Thursday 26<sup>th</sup> August and Saturday 28<sup>th</sup> August, 2021.
- (vi) Submission of Committee Report for tabling - Tuesday 31<sup>st</sup> August, 2021

Members appreciated the schedule of activities planned by the Secretariat and resolved to hold a retreat in Mombasa to consider and adopt the report on the nominees.

**MIN No.JLAC/ 04/2020:**

**ADJOURNMENT**

There being no other business to transact, the meeting was adjourned at 12:30 pm and the next meeting will be held on Thursday 19<sup>th</sup> August, 2021.

Sign.....

Date.....18/8/21.....

**Chairperson**

**ANNEXURE 3**

**ADVERT FOR PUBLIC  
PARTICIPATION**



# Population meeting kicks off amid homosexuality dispute

DP Ruto assures State will not allow introduction of practices that contradict teachings of the Bible

by Benard Gitau and DPPS  
@PeopleDailyKe

Deputy President William Ruto has assured Christians the government will not allow the introduction of practices that contradict their faith, adding that Kenya is a God-fearing nation.

Ruto was referring to the controversy surrounding the upcoming International Conference on Population and Development (ICPD25) in Nairobi this week.

"We will stand firm as leaders to oppose any teachings and issues that go against our stand as Christians," he said.

He spoke on Sunday at the Covenant Church International, Enkongu Enkare in Narokusura, Narok, during the consecration of Bishop Simon Saningo Simpai and Assistant Bishop Chris Kosencha.

But Church leaders have vowed to hold a parallel summit to protest the reproductive health conference, which they claim is aimed at promoting homosexuality.

Led by Kenya Conference of Catholic Bishops (KCCB), Evangelical Alliance of Kenya (EAK), The Holy See among other pro-life groups, the Church accused the organisers of focusing on a few "controversial and divisive" issues.

EAK chairman Bishop Mark Kariuki said



the organisers claim inclusion of sexual and reproductive health rights, abortion on demand and Comprehensive Sexuality Education was the breakpoint.

"Sexual and reproductive health rights is the new frontier in the quest towards greater population control. The ideology that high population impoverishes a nation is a fallacy," he said.

To counter the summit, the Kenya Christian Professional Fellowship has organised a parallel event to be held at the Holy Family Basilica from today until Wednesday. "We shall end our conference with a march for life on Thursday through the streets of Nairobi to stand up for the family and most especially for the unborn children who cannot speak for themselves," he said.

EAK urged government officials who will attend the summit not to sign any commit-

Participants of a Pro-life and Pro-family side events to ICPD-25 forum at the Catholic University of Eastern Africa, yesterday. They represent Kenya Conference of Catholic Bishops, NCKC and the Evangelical Alliance of Kenya.  
PD/SAMUEL KARIUKI

ments that will set the trajectory for the destruction of the youth's morals.

KCCB on Friday expressed concerns the summit aims to agitate for the adoption of homosexuality under the guise of advancing women empowerment. Chairman Rt Rev Philip Anyolo said they would not be part and parcel of such gathering and petitioned President Uhuru Kenyatta to remain steadfast in opposing "harmful" foreign ideologies.

He said as Catholic bishops, they did not believe "these are the issues that truly concern the development of women and humanity at large."

The Holy See has also opposed the summit, citing the organisers' decision to focus on a few controversial and divisive issues that do not enjoy international consensus and that do not reflect accurately the broader population and development agenda outlined by the ICPD, terming it regrettable.

Civil Society Reference Group presiding Convener Suba Churchil urged the Church to get its facts right and avoid interfering with the right of organisers and participants to exercise their freedoms of association, assembly and expression.

Lynette Ouma, of the Organisation of African Youth, dispelled fears the summit would discuss homosexuality and other issues raised by the Church.

Related stories on page 14-15

## Officials ask for more funds to tame early pregnancies

by Harrison Kivisi  
@PeopleDailyKe

The growing number of teenage pregnancies in the coastal region has prompted sexual health stakeholders to demand more allocations to the reproductive health sub-sector.

According to Mombasa county adolescent, youth and sexual programmes coordinator Imani Baraka, the number of teen pregnancies can be scaled down if both levels of government increase funding to conduct reproductive health sensitisation activities at the grassroots.

Baraka said a significant number of the youth are unable to access family planning services due to lack of sensitisation forums.

Dream Achievers Youth Organisation sexual reproductive health officer Gaetano Muganda claimed the upsurge in teen pregnancy cases also meant that majority of the girls were forced to drop out of school.

Civil society groups at the Coast are calling for extensive distribution of adolescent-friendly services at the grassroots to tame teen pregnancies.

In Mombasa, at least 3,000 cases of early pregnancies were recorded in health facilities in 2017 while a significant number went unreported.

## Over 10m Kenyans at risk of going blind, new study shows

by George Kebaso  
@Morarak

More than 10 million Kenyans are at risk of going blind if urgent measures are not put in place to reverse the condition, a new report by the Kenya Society for the Blind shows.

The report indicates that more than 750,000 Kenyans are visually impaired and require urgent interventions including corrective and assistive services. This is on top of an estimated 300,000 who are completely blind.

According to KSB chairman Samson Waweru, who was speaking during the unveiling of "Fungua Macho" initiative at Ndurara Primary School in Dagoretti South Constituency on Saturday, one out of four Kenyans could wake up blind.

"Out of the 10 million people at risk, about 7.5 Million are affected. We as a society and other players in the visual impairment space only have a capacity to reach out to 1.7 million people a year. More services, ranging from simple eye screening and treatment of common eye ailments, are needed to reduce and prevent



Kenya Medical Director Michael Gichangi (centre) shakes hands with University of Nairobi senior philosophy lecturer Reginald Oduor (right) during the official launch of the Fungua Macho initiative in Kawangware. With them is Kenya Society for the Blind chairman Samson Waweru. PD/TABITHA MBATIA

blindness," said Waweru.

He said the visually impaired need support to access assistive devices, which are expensive and difficult to get.

"A fully integrated computer for use by the visually impaired costs as much as Sh200,000 while the cheapest walking cane cost Sh1,500," he added.

### Timely treatment

"Most are blind because they could not access eye care services in time while others simply cannot access medical care," added Waweru.

"Four out of five people who

are blind right now in Kenya do not have to be. Blindness arises due to preventable and treatable conditions such as trachoma and glaucoma, among others. There is also a rising increase of cases of blindness from lifestyle diseases such as diabetes," he added.

He urged the government not to turn a blind eye to the rising cases of people living with blindness. Waweru said there is need for the government to show commitment by setting aside more funds towards the prevention of avoidable blindness in the country.

### REPUBLIC OF KENYA



### THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - THIRD SESSION

In the matters of consideration by the National Assembly:-

1. The Public Participation Bill (National Assembly Bill No. 69 of 2019)
2. The Public Participation Bill (No. 2) (National Assembly Bill No. 71 of 2019)

### SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Further, the National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House".

The Public Participation Bill (National Assembly Bill No. 69 of 2019) seeks to provide a general framework for effective participation, to give effect to the constitutional principles of democracy and participation of the people under Articles 10(2), 118, 196, 201(a) and 232(1)(d).

The Public Participation Bill (No. 2)(National Assembly Bill No. 71 of 2019) seeks to give effect to Articles 10 (2) (a), 69 (1) (d), 118, 174 (c), 184 (1) (c), 196 (1)(b), 201 (a) and 232(1)(d) of the Constitution regarding public participation and establish a legal framework, the parameters for public participation and defines the obligations of state organs and public offices in conducting public participation.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127(3). The Public Participation Bill, 2019 (National Assembly Bill No. 69 of 2019) stands committed to the Parliamentary Broadcasting and Library Committee while the Public Participation Bill (No. 2) (National Assembly Bill No. 71 of 2019) stands committed to the Departmental Committee on Justice and Legal Affairs, for consideration and thereafter report to the House.

Pursuant to Article 118 (1)(b) of the Constitution and Standing Order 127, the respective Committees invite interested members of the public to submit any representations they may have on the said Bills. The Submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before Monday, 18th November, 2019 at 5.00 pm.

Copies of the Bills may be downloaded from Parliamentary website:  
<http://www.parliament.go.ke/the-national-assembly/house-business/bills>

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY