



Our Ref: MZ/AG/1/24

30th October 2024.

**Hon. Attorney General,
Office of the Attorney General and Department of Justice,
P.O Box 40112-00100,
NAIROBI.**

RE: Memorandum on the Public Participation Bill 2024

[Mzalendo](#) ('Patriot' in Swahili) Trust is a Kenyan non-partisan Parliamentary Monitoring Organization started in 2005 and whose mission is to *'promote open, inclusive, and accountable Parliaments in Kenya and Africa.'* We do so by creating and managing civic tech tools, producing evidence-based research, and leading and facilitating advocacy and partnerships with Parliaments, citizens, and other relevant stakeholders. We believe that success in our work will build more effective and responsive legislation and political processes that ultimately support Kenya's national development goals. In line with our [Strategic Plan](#) 2021-2025, we anchor our work on three main pillars: Openness, Inclusion, and Accountability.

Together with the Government of Kenya, through the Ministry of Foreign Affairs, Mzalendo also serves as the Civil Society lead for The Open Government Partnership (OGP) in Kenya. The [Open Government Partnership](#) is a global initiative launched in 2011 to promote transparent, accountable, and responsive governance. Governments and civil society organizations from member countries collaborate to co-create National Action Plans, which include commitments aimed at advancing open governance principles, civic participation, innovation, and transparency. Kenya is currently implementing her 5th National Action Plan, that provides among others, commitments on Digital Governance and Public Participation, Legislative and Fiscal Transparency respectively. It's in this later capacity that Mzalendo convened institutions that work in these two areas of OGP to provide inputs into the proposed Public Participation Framework.



This Memorandum therefore incorporates the views of the organizations that work to advance Digital Governance, Public Participation, Legislative, and Fiscal Openness as annexed.

MEMORANDUM, PUBLIC PARTICIPATION BILL, 2024

NO.	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
-----	--------	--------------------	---------------

ACK Garden House 1st Ngong Avenue 2nd Floor, Wing A P.O Box 21765, 00505 Nairobi, Kenya(e):Info@mzalendo.com (f): mzalendowatch (t): @mzalendowatch (w): www.mzalendo.com



1.	Clause 2 – Definitions	<p>The definition of public participation should be inserted with the following definition: 'Public participation' means the process where individuals and government and non governmental groups are engaged and influence decision-making in policy, legislation, service delivery, oversight, audit, and development matters.</p>	<p>This definition borrows heavily from the definition adopted in the County Public Participation Guidelines by the Ministry of Devolution and Arid and Semi-Arid Lands (ASALs) ¹ which broadens the actors and scope of public participation. Additionally, this definition introduces public participation in audit processes aligning it to ongoing practice at the Office of the Auditor General and its specific department on social audits/social accountability</p>
2.	Clause 3 - Object of the Act	<ul style="list-style-type: none">• We propose an amendment of Clause 3 to include Articles 174(c) and 221 (5) of the Constitution among the Articles that the Act intends to give effect to under sub-clause 4(a).• We propose that the Bill inserts a Clause 3 (e) to add an objective; to enhance <i>timely access of</i>	<p>These Articles highlight public participation as an object of devolution and as a key principle in reviewing the budget estimates.</p> <p>This will enhance transparency and accountability in decision-making, fostering trust between citizens and government.</p>

¹ Accessed at: https://countytoolkit.devolution.go.ke/sites/default/files/resources/county-public-participation_january-2016.pdf



		<i>Information and establishment of Public Participation standards.</i>	
3.	Clause 5 - Determination of the responsible authority	<ul style="list-style-type: none">We propose that an amendment in the determination of responsible authority to read as follows;<ul style="list-style-type: none">(a) In the case of Parliament; the Clerk(b) In the case of the Judiciary; the Chief RegistrarWe propose sub-clause (f) to read as follows:<ul style="list-style-type: none">(f) In the case of the Office of the Controller of Budget, the Controller of Budget;(g) In the case of the Office of the Auditor General, the Auditor-General;We propose an insertion of sub-clause (2) to empower responsible authorities to delegate duties to a designated public participation officer or another officer within the state organ.	<p>This ensures uniformity in the determination of the responsible authority.</p> <p>This provides a clear point of contact for citizens to follow up on public participation matters within state organs and ensures accountability.</p>
4.	Clause 7 – Notice	We propose an amendment of the clause to read as follows;	Adequate notice has not been defined clearly and may therefore be open to abuse as it is open to the discretion of either the State organ or the public office.



		<p>A responsible authority shall give the public adequate notice of Twenty Eight (28) days to make their input on the issue.</p> <p>We propose an amendment to clause 7(g) to include Social media platforms.</p>	<p>The state organ facilitating public participation should be guided accordingly by the principles of administrative law in determining what 'reasonable' consists of. Additionally, this will ensure that members of the public do not feel that they have been denied the right to participate meaningfully. Twenty-eight (28) days will provide interested parties sufficient time to analyze and prepare submissions for a hearing.</p> <p>Including social media acknowledges the widespread use of these platforms for information dissemination and expands the reach of public notices.</p>
5.	Clause 9 – Adequate time	<p>We propose an amendment to Clause 9 to read as follows; A responsible authority shall allocate seven days (7) as adequate time for consultation during a public participation process.</p>	<p>Adequate time has not been defined clearly and therefore may be opened to abuse as it is open to the discretion of the state organ or public office. This provides a clear and reasonable timeframe for public consultation, preventing arbitrary decisions and ensuring sufficient time for meaningful engagement.</p>
6.	Clause 10 – Access to documents	<p>We propose an amendment to Clause 10 to read as follows;</p>	<p>This clause mandates the proactive dissemination of relevant materials and ensures</p>



	<p>10 (1) A state organ or public office shall-</p> <p>(a) Publish and distribute the documents for consideration as widely as possible, using the available means, including providing hardcopies radio and television advertisements, websites or community radio announcements, social media platforms <i>at least 14 days before the deadline for submission of feedback</i> and;</p> <p>(b) Ensure that the documents are published and distributed in a language and form that can be used by the public.</p> <p>(2) A person may request for information relating to an issue under consideration.</p> <p>(3) A request for information under subparagraph (2)</p> <p>(a) shall be addressed to the head of state organ or public office or such other person as the state organ or public office may designate for that purpose;</p> <p>(b) may, where the authority incurs expense in providing information, be subject to payment of a reasonable fee and;</p>	<p>that citizens can engage with decision-making in a timely and informed manner.</p> <p>It requires the responsible authority to make information widely accessible through both traditional and digital platforms, giving the public enough time to review and respond. The clause also emphasizes clarity and inclusivity by mandating that information be presented in easily understandable formats, which is especially important for marginalized groups.</p> <p>The clause also empowers the public by granting them the right to request further information. Clear procedures are established for handling such requests, including designated points of contact and reasonable fees. It is also aligned to Article 35, which guarantees access to information held by the state.</p>
--	--	---



		<p>(c) may be subject to information disclosure limitations under the Access to Information Act.</p> <p>(4) Subject to Article 35 of the provisions of the Constitution and the Access to Information Act and the Data Protection Act, a state organ or public office, may decline to give information, to an applicant where -</p> <p>(a) the request is unreasonable in the circumstances or</p> <p>(b) the applicant fails to satisfy any access to information requirements.</p> <p>(5) The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section.</p>	
7.	Clause 12 – Conduct in a public participation forum	We propose a deletion of this clause.	This standard is open to subjective interpretation and potential abuse. The limitation on freedom of expression could be exploited to silence dissenting voices or remove individuals who express critical views, thereby stifling meaningful engagement. Such discretion may ultimately discourage genuine public input, as participants may fear arbitrary removal or retaliation for expressing viewpoints that differ from those of the authority in charge.



8.	Clause 13 – Development of specific guidelines for public participation.	<p>We propose an amendment to this clause to read as follows;</p> <p>A responsible authority shall develop guidelines for undertaking public participation within six months of the commencement of this Act.</p>	<p>The inclusion of a clear timeline would enhance accountability and implementation.</p>
9.	Clause 16 – General penalty	<p>The Bill does not outline what constitutes an offence in its entirety.</p>	<p>The Bill must clearly define punishable conduct which will then be followed by the penalty. In this way, both citizens and public/state officers can foresee when a specific act would be a violation and adjust their conduct accordingly.</p>
Proposed Additional Clauses			
1.	Commencement Clause	<p>We propose an insertion of the Commencement Clause.</p>	<p>This will be in accordance with Article 116 (2) of the Constitution of Kenya.</p>
2.	Application	<p>We propose an insertion of an Application Clause to read as follows;</p> <p><i>The Act shall apply to all state organs and public offices in Kenya.</i></p>	
3.	Guiding Principles in conducting public participation.	<p>We propose an insertion of guiding principles to read as follows;</p> <p>We propose an insertion to read as follows;</p>	<p>This will further emphasize and clarify the core principles underpinning the Bill.</p>



A state organ or public office shall in conducting public participation be guided by the following principles —

(a) the need to provide timely access to relevant information relating to public offices and state organs policy formulation and implementation;

(b) the national values and principles of governance as provided for under Article 10 of the Constitution;

(c) the values and principles of public service as set out under Article 232 of the Constitution;

(d) principles of public finance as set out under Article 201 of the Constitution;

(e) recognition and promotion of the role of non-state actors participation in decision-making processes;

(f) the values and principles of leadership and integrity under Chapter Six of the Constitution;

(g) promotion of partnerships between public offices and state organs and the non-state organs in decision making processes; and



		(h) the participation of the women, youth and persons with disabilities in decision making processes.	
4.	Obligations of a responsible authority	<p>We propose an insertion of the clause to read as follows;</p> <p>The responsible authority shall undertake the following obligations to ensure the effective and inclusive participation of the public;</p> <p>(a) ensure that members of the public are accorded adequate and reasonable time to make presentations</p> <p>(b) ensure that a member of the public shall not face any sanctions for attending and making submissions during public participation forums;</p> <p>(c) ensure that public participation processes are accessible to persons with disabilities and provide reasonable accommodations as required, including sign language interpretation, accessible venues, and materials in alternative formats.</p>	<p>Past public participation efforts have been ad hoc and mired with inconsistency. By codifying the obligations of responsible authorities, the Bill promotes standardized procedures across all state organs and public offices, creating predictability and transparency for both the public and officials.</p>



5.	Rights of a member of the public in public participation.	<p>We propose an insertion of a clause to read as follows;</p> <p>1) A member of the public or an entity likely to be affected by a decision shall have the right to participate in the decision-making processes.</p> <p>(2) A member of the public or entity may –</p> <p>(a) attend a public participation forum;</p> <p>(b) attend a public participation forum and make presentations either orally or by way of written submission to a state organ or public office on the subject matter as may be determined;</p> <p>or</p> <p>(c) submit a written submission to the state organ or public office conducting public participation;</p> <p>(d) make presentations without undue influence or interruptions from any state or public officer, including attempts to coerce, intimidate, or restrict the content of their presentations.</p> <p>(3) if in any public participation forum, it becomes necessary to keep the information of a participant confidential, the state organ or the public office shall, hold part of the</p>	<p>The Constitution of Kenya (2010) lays the groundwork for public participation as a cornerstone of governance. Articles 10(2), 69(1)(d), 118, 184(1)(c), 196, 201(a), and 232(1)(d) all underscore the importance of citizen involvement in government processes. A clear articulation of rights empowers members of the public to engage confidently and effectively in decision-making.</p>
----	---	---	---



		proceedings in private, and shall ensure the identity of the participant is not disclosed.	
6.	E-platform	<p>We propose an insertion of the clause to read as follows;</p> <p>The responsible authority shall establish and ensure maintenance of an online platform to enable access, through the internet, of information, relating to the institution and other notices to the public.</p>	<p>An online platform ensures wider, real-time access to institutional information and public notices, promoting transparency and inclusivity. It allows more people to engage in decision-making processes regardless by streamlining public communication and increasing accountability.</p>
7.	Reports	<p>We propose an insertion of the clause to read as follows;</p> <p>(1) The responsible authority shall prepare an annual report at the end of each financial year.</p> <p>(2) Where the responsible authority relates to an institution that is required by any written law, to submit an annual report, the report referred to under subsection (1) shall form part of its annual report.</p> <p>(3) The annual report prepared under subsection (1) shall be tabled, in the case of a national government institution, in the National Assembly and the Senate, or, in the case of a county government institution,</p>	<p>The objective of public participation is to collect public opinion. The annual report should therefore outline all the information collected during all public participation sessions held and the outcomes resulting from the same. In line with Article 35 of the Constitution, the clause should also include that the annual reports on public participation made at the end of each fiscal year should be made public for access to the public to give effect to the provision.</p>



the respective County Assembly not later than three months after the end of the year to which the report relates.

(4) The annual report shall contain –

(a) a description of the activities and outcomes of public participation.

(b) a summary of the number and nature of public participation sessions held,

(c) the immediate output and outcomes from public involvement

(d) an update on the future steps or progress of the matters under consideration

(e) a description of any complaints made against the institution in respect of public participation,

(f) the action taken and the period within which the complaint was addressed; and

(g) any other information that the responsible authority may consider relevant.

(5) The responsible authority shall cause the annual report to be published and publicized in such other manner as the responsible authority may determine.



We hope our proposals will be considered during the deliberations of the Bill.

Sincerely,

Caroline Gaita

**Caroline Gaita,
Executive Director.
Mzalendo Trust.**

Annex 1: List of Participants

Annex 2: List of Court Cases on public Participation.












ACK Garden House 1st Ngong Avenue 2nd Floor, Wing A P.O Box 21765, 00505 Nairobi, Kenya(e):Info@mzalendo.com (f): mzalendowatch (t):
@mzalendowatch (w): www.mzalendo.com



Submission of Memoranda on the proposed legislation – the Public Participation Bill, 2024.

Venue: Four Points by Sheraton, Hurlingham Nairobi.

Time: 8:00AM - 1:00PM




Organisation	Date and Signature
KENYA YOUNG MEMBERS OF COUNTY ASSEMBLIES (KYMCA)	29/10/24 
Nahum Joske	29/10/24 
J&R Foundation	29th Oct 24 
KELIN) KENYA LEGAL & ETHICAL ISSUES NETWORK ON HIV/AIDS	29 OCTOBER 2024 
KIT	
KICTANET	29th October 2024 
Internews	29th October 2024 
PARADIGM INITIATIVE	29.10.24 
Law Office East Africa	29-10-24, 
AFRODAD	29-10-24 



Submission of Memoranda on the proposed legislation – the Public Participation Bill, 2024.

Venue: Four Points by Sheraton, Hurlingham Nairobi.

Time: 8:00AM - 1:00PM


Organisation	Date and Signature
CENTRE FOR FIS CAL KYBERREKA AFFAIRS	29 TH OCTOBER, 2024 
CENTRE FOR MINORITY RIGHTS DEVELOPMENT (CEMIDE)	29 TH OCTOBER, 2024 
LOCAL DEVELOPMENT RESEARCH INSTITUTE	29 TH OCTOBER, 2024 



Submission of Memoranda on the proposed legislation – the Public Participation Bill, 2024.

Venue: Four Points by Sheraton, Hurlingham Nairobi.

Time: 8:00AM - 1:00PM

Organisation	Date and Signature
Siassa Place	29 th October 2024 Atieno
Tweezeri East Africa,	29.10-2024
AFKODAD	29-10-2024 

LIST OF JUDGMENTS ON PUBLIC PARTICIPATION.

1. SC Petition. No. 5 of 2017; [2019] eKLR (BAT Case): British American Tobacco Kenya, PLC (formerly British American Tobacco Kenya Limited) v. Cabinet Secretary for the Ministry of Health & 2 Others; Kenya Tobacco Control Alliance & Another (Interested Parties); Mastermind Tobacco Kenya Limited (The Affected Party)- *Outline principles of public participation.*
2. Okioti & 6 others v Cabinet Secretary for the National Treasury and Planning & 3 others; Commissioner-General, Kenya Revenue Authority & 3 others (Interested Parties) (Petition E181, E211, E217, E219, E221, E227, E228, E232, E234, E237 & E254 of 2023 (Consolidated)) [2023] KEHC 25872 (KLR) (Constitutional and Human Rights) (28 November 2023): *Provided clarity on the question of feedback.*