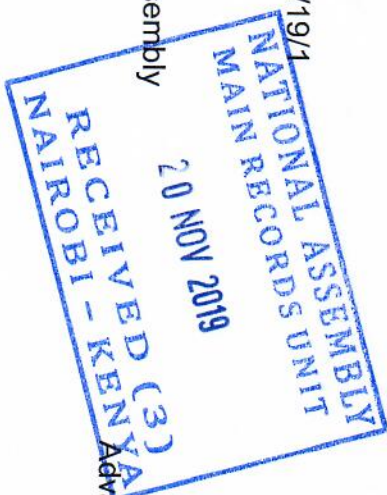


OUR REF: NJ/NA/PPB.2019/19/1

YOUR REF:

19.11.2019

The Clerk of the National Assembly
P.O. Box 41842-00100
NAIROBI



Advanced copy sent to clerk@parliament.go.ke

Dear Sir/Madam,

RE: SUBMISSION OF MEMORANDUM ON THE PUBLIC PARTICIPATION BILL, 2019.

We refer to the above matter and the call for public participation recently.

Pursuant to Article 10(2) and Article 118 of the Constitution of Kenya 2010, we hereby tender our submission on the above-mentioned Bill.

Sincerely,



Rose J. Birgen

rose@naturaljustice.org

No.	Clause of the Bill	Sub-heading of the Bill	Proposed Changes	Rationale For Proposed Changes
1.	4	Object and purpose of the Act	<p>The object and purpose of the Act is narrow. The framework should be broadened to include the following: <i>Identify the conditions required to make the participation process credible and to maximize interest and commitment from the stakeholders.</i></p>	<p>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 strong emphasis should be placed on the adequate conditions for effective participation including transparency, accountability etc.</p>
2.	5 (a)	Guiding principles in	This clause should be amended to	In order to facilitate effective public

	conducting public participation	<p>include “accurate, complete” access to information relating to the public offices and state organs policy formulation and implementation.</p> <p>The clause should therefore read as follows: (a) the need to <u>provide accurate, complete and timely</u> access to relevant information relating to the public offices and state organs policy formulation and implementation</p>	<p>participation, timely access to information may not be adequate in itself. It is important and necessary that in addition to being timely, the information disseminated should be accurate, complete, relevant and it in formats and mechanisms that are easy for all to access, understand and to use or re-use.</p>
3.	5 (h)	<p>This clause should be amended to add “the minorities and marginalised groups” immediately after the word persons with disabilities and therefore to read as follows: (h) the participation of the women, youth, and persons with disabilities and <u>the minorities and marginalised groups.</u></p>	<p>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.</p> <p>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.</p>

				<p>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.</p>
4.	6 (e)	<p>Obligations in conducting public participation</p>	<p>We strongly emphasize the need to establish and define reasonable timelines for public involvement.</p>	<p>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.</p> <p>In the case of <i>Coalition for Reform and Democracy (CORD) & Another v Republic of Kenya & Another (Petition No. 628 & 639 of 2014)</i>, the Bill was published on December 8, 2014, and the same was only made available to the public on 9 December 2014. The court held that meaningful public participation and engagement was rendered impossible, given the size of the Bill, the tight timelines for making submissions and the difficulty in accessing the Bill.</p>

5.	6 (g)	<p>We propose that this sub-clause be amended by deleting the word “enhance” and replacing it with “facilitate effective”. It should read as follows: (g) <u>enhance facilitate effective</u> public participation through civic education for purposes of crating an enlightened and empowered citizenry.</p>	<p>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.</p>
6.	6 (m)	<p>This clause should be amended to include “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) <u>Ensure accurate, complete and</u> timely access to information by the public on the subject matter under deliberation and the issues to be addressed.</p>	<p>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.</p>
7.	6 (k)	<p>We propose that this sub-clause is</p>	<p>Article 47 of the Constitution of Kenya</p>

			<p>amended to provide for a reasonable timeline within which decisions are to be communicated to the general public.</p> <p>The clause should therefore read as follows:</p> <p>(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 <u>thirty (30) days</u> from the date of the decision.</p>	<p>provides for a right to fair administrative action that is expeditious, efficient, lawful reasonable and procedurally fair.</p> <p>This is a set of moral norms, values and principles aimed at protecting the citizen</p> <p>Prescribing timelines is important because it provides a measure to advance and defend this right.</p>
8.	7	Public participation by parliament	<p>We suggest that it be re-written to make clear the intent.</p>	<p>In our view, the wording of this 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.</p>
9.	10 (2)	Public participation forum	<p>We recommend an addition of sub-clause (e) to require the secretary to</p>	<p>Clause 8 of the Public Participation Bill provides that a member of the public has:</p>

			collate written submissions for onward transmission to the relevant state organ or public office	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.
10.	10 (3) (4) (c)		We recommend an addition of section (v) marginalised groups and minorities	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.
11.	11 (1) (c)	Notification of public participation fora	We recommend that Clause 11(c) be deleted.	Clause 11(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

			<p>We recommend an additional sub-clause to provide for “the Kenya Gazette” as the other mechanisms for notification of public participation.</p>	<p>notification. 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.</p>
12.	11 (1)			



Eva Okoth <eva@naturaljustice.org.za>

Submission of Memorandum on the Public Participation Bill 2019

Rose Birgen <rose@naturaljustice.org>

Tue, Nov 19, 2019 at 4:52 PM

To: clerk@parliament.go.ke

Cc: Gino Cocchiaro <gino@naturaljustice.org>, Eva Okoth <eva@naturaljustice.org>

Dear Sir/ Madam,

We refer to the above matter.

Pursuant to Article 10(2) and Article 118 of the Constitution of Kenya 2010, we hereby attach our submission on the above-mentioned Bill.

Regards,



Rose J. Birgen

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NJ_Comments to the Public Participation Bill 2019_2019.11.19.pdf
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