

MEMORANDUM ON THE PUBLIC PARTICIPATION BILL, 2024

FROM: STAND UP SHOUT OUT BONGA NA GAVA

TO: THE OFFICE OF THE ATTORNEY GENERAL, SHERIA HOUSE, HARAMBEE AVENUE

RE: MEMORANDUM ON THE ROADS AMENDMENT BILL 2024 : DATE: 30TH OCTOBER 2024

Public participation is a fundamental principle of governance in Kenya, rooted in Article 10 of the Constitution, which mandates the involvement of citizens in decision-making processes that affect their lives. Recent efforts have aimed at establishing a structured legal framework to facilitate effective public participation.

Following a call for submission of comments, SUSO through the Bonga Na Gava Project with #BNGWarriors & #YouthPolicyWarriors set up a focused review of the Public Participation Bill 2024.

In alignment with the BNG mission to empower youth and community members as ambassadors for conservation and advocacy, and to facilitate them to formally present their views to government on proposed laws, policies and regulations, the BNG Platform provided a dynamic space for #BNGWarriors & #YouthPolicyWarriors to delve into the intricacies of the Public Participation Bill, 2024.

Through collaborative discussions and hands-on activities, during the physical review of the Bill, via the BNG website, the BNG Warriors WhatsApp Platform, X Space and Social media BNG Warriors & Youth Policy Warriors analysed the Bill, discussed its implications, and identified ways to strengthen public participation mechanisms as well as propose meaningful changes to the bill while playing a vital role in shaping the future of public participation in Kenya and submitted a memorandum on the Public Participation Bill, 2024.

STAND UP SHOUT OUT: BONGA NA GAVA: COMMENTS TO THE PUBLIC PARTICIPATION BILL, 2024

Section / Clause	Copy & Paste here the specific provisions in the PP Bill, 2024 you wish to comment on	Proposed Amendments (Provide exact wording of how your proposed amendment should read)	Explain the Reason for the Amendment	Any other comments
Clause 1 Short Title	This Act may be cited as the Public Participation Act, 2024.	Amend to: "This Act may be cited as the Public Participation <u>and Civic Engagement</u> Act, 2024	The proposed title broadens the Act's focus to include civic engagement, aligning it with broader democratic principles.	None
Clause 2 - Interpretation		<p>We recommend an addition of definition:</p> <p><u>'Civic Education' means the process of educating citizens on their rights, responsibilities, and duties to empower and motivate them to identify what areas of the political and governance processes they can effectively participate in; what they can do to influence political outcomes and thereby improve the quality of governance at both local and national levels.</u></p>		
		<p><u>We recommend an addition of definition/ terminology</u></p> <p><u>"Cooperative government" means government is constituted as national</u></p>	There are many gaps between how systems are intended to work and how they actually operate in practice. The overlap of activities and lack of	

		<p><u>and county spheres of government which are distinctive, interdependent and interrelated</u></p>	<p>coordination between national and county public participation practices further points to the need for an integrated national Public Participation Framework.</p> <p>In order to facilitate the intentions of the Bill, cooperative governance should reflect the role of intergovernmental relations within a multi-tiered system, as envisioned in the Constitution. It is the vision of the Constitution that the spheres of government would separately and together serve the interests of the people in a unique way and should therefore engage each other as partners and not as adversaries.</p>	
		<p><u>We recommend the addition of definition:</u></p> <p><u>‘Public participation’ means any process that directly engages the public in decision-making and gives full consideration to public input in making that decision</u></p>	<p>Public participation is not a single event. It consists of a series of activities and actions by a responsible authority over a period to both inform the public and obtain input from them. Public participation affords stakeholders (those that have an interest or stake in an</p>	

			issue, such as individuals, interest groups, communities) the opportunity to influence decisions that affect their lives.	
Clause 3 Object of the Act	(c) promote transparency and accountability in decision-making	None (Acceptable as is)	N/A	Additional guidelines for monitoring and reporting on transparency could be beneficial (can be inserted in the second schedule)
	(d) enhance public awareness and promote public participation in governance processes.	Amend to: "enhance public awareness, <u>capacity</u> , and promote public participation in governance processes"	Adding "capacity" highlights the need for educating the public to engage effectively in governance.	
			We recommend inclusion of an addition sub clause as follows: <u>(e) Ensure timely access to information</u> <u>(f) Where necessary, to provide monitoring indicators for public participation.</u>	
		<u>We recommend an inclusion of Clause 3A titled "Principles and Values" as follows:</u>	It is important to integrate and incorporate values and principles that ensure meaningful, equitable, and	

		<p><u>Public participation shall be guided by the following values and principles:</u></p> <p><u>(a) Recognition and respect of the diversity in the country</u></p> <p><u>(b) adherence to national values and principles of public governance set out in Article 10 of the Constitution</u></p> <p><u>(c) Protection and promotion of interests of minorities, marginalised groups, communities, and persons with disabilities</u></p> <p><u>(d) Commitment to inclusivity and equity</u></p> <p><u>(e) Transparency, accountability and feedback</u></p>	transparent engagement that can strengthen governance.	
Section 4 Scope of Public Participation	(d) any other matter as may be prescribed by law.	Amend to: "any other matter as may be prescribed by law or as deemed necessary by the responsible authority"	This provides flexibility for emerging issues that may benefit from public input.	None
Clause 5 Determination of the Responsible Authority	<p>The responsible authority for purposes of the Act shall be-</p> <p>(a) In the case of Parliament, the relevant committee in each House responsible for the matter under consideration</p> <p>(b) In case of Judiciary, the Chief Justice</p> <p>(g) In case of the county assembly, the relevant committee of the</p>	<p>For purposes of uniformity we recommend that you consider either of the suggested recommendations below:</p> <p>(a) In the case of Parliament, <u>the Chairperson of the relevant committee</u> in each House responsible for the matter under consideration</p>	<p>Coordination can improve consistency in cases where multiple authorities are involved.</p> <p>Clarify that for cross-sector matters, coordination between authorities may be required</p> <p>There is a lack of consistency in</p>	None

	<p>county assembly responsible for the matter under consideration; and</p>	<p>(b) In case of Judiciary, the Chief Justice Registrar of the Judiciary</p> <p>(g) In case of the county assembly, the Chairperson of the relevant committee of the county assembly responsible for the matter under consideration; and</p> <p>Or</p> <p>(a) In the case of Parliament, the Speaker in each House responsible for the matter under consideration</p> <p>(b) In case of Judiciary, the Chief Justice</p> <p>(g) In case of the Speaker of the county assembly, the relevant committee of the county assembly responsible for the matter under consideration; and</p>	<p>the identification of responsible authorities. In addition, the list is not exhaustive</p>	
<p>Clause 6</p> <p>Considerations when undertaking Public Participation</p>	<p>(c) impact of the matter on the public;</p>	<p>We recommend the following amendments:</p> <p>(c) <u>the immediate and long-term impact of the matter on the public;</u></p> <p>(h) <u>pre education programme requirements best fit within the context</u></p>	<p>Emphasising both immediate and future impacts encourages comprehensive assessment.</p> <p>Education is a key element to ensuring effective public participation. It should take into</p>	

		<p><u>(i)The need for the use of advanced technology, including digital tools and data analytics, to facilitate the processing, analysis, and synthesis of public input.</u></p> <p><u>(2) The responsible authority shall comply with the provisions of the Data Protection Act, 2019, in all public participation processes, ensuring that any personal data collected is adequately protected, anonymised where appropriate, and used solely for the purpose of public participation.</u></p>	<p>account the relevant context, and target poor and disadvantaged communities, rather than all sectors of the community.</p> <p>As public participation moves online, data privacy and protection must be emphasised. The Bill should mandate strict adherence to existing data protection laws (i.e, the Data Protection Act, 2019) to protect personal information submitted during the participation process. This includes ensuring anonymity where required and clear terms on how personal data will be handled.</p>	
<p>Clause 7 Notice</p>	<p>(1) A responsible authority shall give the public adequate notice to make their input on the issue.</p>	<p>(1)A responsible authority shall give the public <u>timely and</u> adequate notice to make their input on the issue.</p> <p>(2) For purposes of subsection (1), a</p>	<p>Adding "timely" ensures that notices allow sufficient preparation for effective public participation</p>	<p>None</p>

	<p>(2) For purposes of subsection (1), a responsible authority shall establish mechanisms to enable the widest reach which may include publication of notices in-</p> <p>(3) A public participation programme under sub-section (1) shall clearly identify—</p> <p>(a) specific purposes for consultation;</p> <p>(b) the community, profession or groups to be consulted;</p> <p>(c) the length of the consultations;</p> <p>(d) whether submissions should be made orally, in writing or both; and</p> <p>(e) the issues or matter for consultation.</p>	<p>responsible authority shall establish <u>context specific</u> mechanisms to enable the widest reach which may include publication of notices in-</p> <p>(g) <u>Kenya Gazette</u>; and</p> <p>(h) <u>Official social media platforms</u></p> <p>(3) A public participation programme under sub-section (1) shall clearly identify—</p> <p>(f) <u>the accessible public participation mechanisms, including digital platforms and mobile-based applications, with adequate security and privacy protections for all participants.</u></p>	<p>In public participation, context matters (who you are involving, region, demography etc) and it is important to ensure that the responsible considers context in determining the best fit mechanism to employ to obtain a wide reach.</p> <p>The Bill should encourage a hybrid approach combining both in-person and virtual public participation mechanisms, ensuring inclusivity and greater</p>	
<p>Clause 8 Access to Public Participation</p>	<p>(2) A responsible authority shall take reasonable measures to facilitate the participation of women, persons with disabilities, youth, ethnic and other minorities, and marginalised communities.</p>	<p>We recommend the following amendments:</p> <p>(2) A responsible authority shall take reasonable <u>proactive</u> measures to facilitate the participation of women, persons with disabilities, youth, ethnic and other minorities, and marginalised</p>	<p>Changing "reasonable" to "proactive" emphasises intentional actions to ensure inclusive participation</p>	<p>1. While the Bill mentions facilitating participation for marginalised groups, it could go further by mandating targeted outreach programs for rural, ethnic minorities, persons with disabilities, and</p>

	<p>(3) Where the targeted participants are not conversant in the official languages, the responsible authority shall facilitate interpretation for the participants.</p>	<p>communities.</p> <p>We recommend the following amendment:</p> <p>(3) Where the targeted participants are not conversant in the official languages, the responsible authority shall facilitate interpretation for the participants, <u>including provisions for braille sign language, audio formats and other assistive devices</u>”</p>	<p>To consider adding options for braille and sign language often used by persons with disabilities</p>	<p>gender minorities. Provisions could include mobile participation units or door-to-door consultations for areas with poor infrastructure.</p> <p>2. Many jurisdictions, such as Canada, have recognized the importance of delivering consultation materials in multiple languages, sign language, braille, and accessible digital formats. The Bill should mandate these forms of accessibility across all public participation initiatives.</p> <p>3. The Bill should incentivise or mandate investments in internet infrastructure and digital literacy programs in rural and underserved areas to bridge the digital divide.</p> <p>4. Building on international human rights norms, the Bill should ensure that all public participation processes explicitly adopt a rights-based approach, ensuring all citizens can participate without fear of Discrimination, repression, or limitation of expression.</p>
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Clause9- Adequate Time	A responsible authority shall allocate adequate time for consultation during a public participation process.	We recommend the following amendment: A responsible authority shall allocate adequate and reasonable time based on the complexity of the matter but in any event not less than 30 days from the date of notice	Including "reasonable time" based on the matter's complexity ensures sufficient preparation for more informed input. Providing a minimum time provides clearer guidelines for the minimum duration of consultation.	The Bill could also adopt provisions for staggered participation (i.e., multiple rounds of consultation for especially sensitive or far-reaching issues), allowing the public to reflect on and react to draft decisions at various stages of the decision-making process.
Clause 10 Access to Documents	A responsible authority shall facilitate access to documents relating to the matter under consideration	We recommend the following amendments: A responsible authority shall <u>ensure timely and convenient</u> facilitate access	Emphasising timeliness and convenience improves transparency and access.	

		to documents relating to the matter under consideration <u>and at reasonable cost...</u> ”	Opportunity for access to information is an absolute prerequisite for effective public participation and cost of access should not be an impediment. This should call for responsible authorities to consider e-governance tools	
Clause 11 Processing	(a) consider and analyse responses received from the public; and (b) make available the reasons for the final decision to the public	We recommend the following inclusion : <u>(c) provide feedback on how public input influenced the final decision.</u>	Ensures transparency by showing how public feedback impacted the decision.	1. The Bill should strengthen provisions requiring transparent feedback mechanisms, including explanations on how public input influenced final decisions. In jurisdictions like Australia and New Zealand, governments are required to publish consultation reports summarising the public’s contributions and the rationale for including or excluding certain inputs. 2. An improvement could be made by introducing mechanisms for real- time monitoring of public participation processes. 3. The Bill should introduce a framework for post-consultation evaluations,

				<p>where the effectiveness of public participation exercises is periodically reviewed. This could involve independent audits and participant surveys to assess the quality and inclusivity of the processes.</p>
<p>Clause 12 Conduct in a Forum of Participation</p>	<p>(1) A person who attends a forum of public participation shall be courteous, respectful and civil</p> <p>(2) The right to freedom of expression set out in Article 33 of the Constitution shall be limited to the extent that it is necessary to facilitate public participation under subsection (1)</p>	<p>We recommend that this is amended as follows:</p> <p>(2) The right to freedom of expression set out in Article 33 of the Constitution shall be limited <u>only</u> to the extent that it is necessary to facilitate public participation under subsection (1)</p> <p>(4) Where a person interested in or likely to be affected by a proposal elects to attend a forum for public participation at which the proposal is considered, that person shall have the right to—</p> <p>(a) make submissions orally or in writing to the relevant responsible authority;</p> <p>(b) be accorded adequate time to make his or her submissions; and</p> <p>(c) make submissions without interruption, intimidation, coercion or</p>	<p>Clarifies that any restriction is minimal, respecting freedom of expression as much as possible.</p>	<p>There are no clear guidelines on what is disruptive for sub-clause (3) to come into effect.</p>

		undue influence by— (i) an officer of the responsible authority; or (ii) any other person attending the public meeting.		
Clause 13(1) Development of Specific Guidelines	(1) A responsible authority shall develop specific guidelines for undertaking public participation.	We recommend the following amendment: (1) A responsible authority shall develop <u>and periodically review</u> specific guidelines for undertaking public participation...”	Periodic reviews ensure guidelines remain relevant to evolving participation needs.	
Clause 14(1) Publication of Guidelines	(1) A responsible authority shall publish the specific guidelines on public participation developed pursuant to section 14 in the <i>Gazette</i>	We recommend the following: (1) A responsible authority shall publish the specific guidelines on public participation developed pursuant to section 14, <u>within six months of the commencement of this Act</u> in the <i>Gazette</i>	Providing a time-frame for developing specific guidelines is important to ensure that processes are put in place as soon as possible.	Could consider encouraging digital publication for wider accessibility , e.g newspapers, for people who do not have quick access to the Kenya Gazette
Clause 15(2) Public Participation by Parliament	(2) Where a Committee of one House of Parliament has conducted public participation on a Bill, a Committee of the second House of Parliament may— (a) rely on the report tabled by the committee of the originating	Amend to: "...may rely on the report tabled by the committee of the originating House, provided public access to this report is ensured”	Ensuring public access promotes transparency and accountability in parliamentary processes.	

	House; or (b) seek additional views on the Bill with respect to substantive amendments made to the Bill during its consideration			
Clause 16 General Penalty	Offences for failing to adhere to public participation principles, with fines for natural and juristic persons.	We recommend that this provision be amended to include different levels of specific penalties for different levels or categories of offences or to reflect the severity of the breach, e.g., introduce levels for minor vs. severe violations	Differentiating levels of violations offers a fairer approach to enforcement.	We also recommend that the theme for Clause 16 be “Penalties”
		We recommend the inclusion of another clause as follows: 18. Regulations The Cabinet Secretary, in consultation with the various responsible authorities, shall make Regulations for the better carrying out of the provisions of this Act within a year of the enactment of this Act.		
GENERAL COMMENTS				
Inclusivity and Accessibility	Digital Access	The Bill could benefit from more explicit provisions encouraging the use of digital platforms and tools (such as social media, SMS alerts, and mobile applications) for disseminating information and engaging		

Measures		the public, especially in rural or remote areas where traditional methods like newspapers may have limited reach.
	Support for Diverse Abilities	Adding specific references to braille, sign language, and other formats for individuals with disabilities would strengthen the commitment to inclusivity in public participation.
Monitoring and Evaluation (M&E) Framework	Provisions for assessing the effectiveness of public participation.	A clear M&E framework would provide responsible authorities with guidelines for evaluating how well public input was integrated into decision-making and whether participation objectives were met. Regular reporting on these evaluations could be mandated for transparency and accountability.
	Feedback Mechanism	The Bill should require that responsible authorities provide clear and timely feedback to participants, indicating how their input influenced the final decision or why certain suggestions were not adopted. This would foster trust in public participation processes and encourage future engagement.
Periodic Review of Public Participation Guidelines		Including a mandatory review and update of public participation guidelines (e.g., every three to five years) would ensure the Bill remains responsive to emerging trends and technological advancements, allowing public engagement processes to evolve over time.
Clearer Accountability for Non-Compliance		While the Bill includes penalties for non-compliance, it could go further by specifying enforcement mechanisms. For example, independent oversight bodies or parliamentary committees could be given a role in monitoring adherence to the Act and issuing reports or recommendations on compliance.
Addressing Resource Allocation		The Bill could outline resource allocation guidelines to ensure that adequate funds and staffing are available to support public participation efforts. This could help avoid underfunding, which might hinder effective implementation of public participation activities, particularly at the county level.
Rights of a member of public or stakeholder.		Clarifying the rights of participants ensures they can engage freely without fear of retaliation, discrimination, or exclusion. This promotes a rights-based approach to public participation and aligns with international human rights standards. By recognizing and safeguarding these rights, the Bill ensures that all individuals, regardless of socioeconomic status, gender, disability, or background, can equally

		contribute to governance processes. This would make public participation accessible and inclusive.
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