

**GUIDE ON PARTICIPATION IN
THE LAW-MAKING PROCESS
AT THE NATIONAL AND
COUNTY LEVEL**

Introduction

Government-citizen relations are about interactions between government and citizens in a democracy. Concretely, this means that relations between government and citizens exist in a wide range of areas from policy-making to delivering and consuming public services. In Kenya, government operates on different levels: national and county level. At all these levels, government is in contact with citizens. Citizens, on the other hand relate to government as individuals or as part of organized groups such as civil society organizations (CSO). This guide looks at government-citizen relation in law and policy-making in both tiers of government.

The overall objective of this guide is to enhance the public awareness, knowledge and understanding of how the Parliament legislates.

Other objectives of this guide include:

- a. Outline the legal framework for participation in law and policy formulation
- b. Explain the mandate of Parliament and the legislative functions on national and county government
- c. Explain the stages law and policy formulation
- d. Identify spaces and tools for participation in the law and policy process
- e. Illustrate how to track bills in Parliament

Legislative Powers

There are three arms of government: the Executive, the Legislature, and the Judiciary.

The Executive: The executive comprises of *inter alia* the President and the Cabinet Secretaries. Some of the legislation tabled in Parliament is initiated by the Cabinet Secretary of the respective ministries. The president is responsible for assenting Bills into law.

The Legislature: This is the law making arm of the government. Article 93 establishes the Parliament –the National Assembly and the Senate- to perform legislative activities.

The Judiciary: The Judiciary also plays a role in the law-making process by providing an avenue for challenging unconstitutional laws.

At the **National level:**

- Article 109 gives Parliament the powers to exercise legislative powers, through Bills passed by Parliament and assented to by the President
- The Parliament has two houses of Parliament: The National Assembly and the Senate
- The National Assembly is mandated to enact legislation while the Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113

At the **County level:**

- Article 185 vests the legislative authority of a county in the County Assembly
- The County Assembly exercises its legislative authority by making any law that are necessary for, or incidental to, the effective performance of the functions and exercise of the county government under the fourth schedule (See annex A)

Important Pointer:

- The official languages of a Parliament (National Assembly and Senate) and the county assembly shall be Kiswahili, English and Kenyan sign language;
- The business of the Parliament (National Assembly and Senate) and the county assembly may be conducted in English, Kiswahili and Kenyan sign language

The Legal Framework for Participating in Law and Policy Process

Public participation is one of the fundamental principles of democracy. Democracy is premised on the idea that all citizens are equally entitled to have a say in decisions that affect their lives and their rights.

Public participation, as defined by the International Association for Public Participation, is the involvement of those affected by a decision, in the decision-making process. This encompasses a range of public involvement, from simply informing people about what Parliament is doing to delegating decisions to the public.

The Constitution of Kenya, 2010	<p>Article 1 provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution</p> <p>Article 10 provides that the national values and principles of governance bind all state organs, state officers, public officers and all persons whenever they enact, apply and interpret any law, and whenever they make or implement any public policy decision. The national values and principles of governance include good governance, inclusiveness, rule of law, democracy, transparency and accountability, social justice, human dignity and public participation</p> <p>Article 27 provides that every person is equal before the law and has the right and equal protection and equal benefit of the law. Equality includes the full and equal enjoyment of all rights and fundamental freedoms irrespective of race, sex, health status, marital status, ethnic or social origin, colour, age, disability, religion, culture or birth</p> <p>Article 33 provides every person with the right to freedom of expression including the freedom to seek, receive and impart information and ideas</p> <p>Article 35 gives every person the right to access information held by the state and information held by another person and required for the exercise or the protection or fundamental freedom</p>
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	<p>Article 37 gives every person the right to assemble and to present petitions to public authorities</p> <p>Article 118 requires Parliaments to conduct its business in an open manner, and to facilitate public participation and involvement in its legislative and other business including its committees</p> <p>Article 119 gives every person the right to petition Parliament and to consider any matter within its authority, including to enact, amend or repeal any legislation</p>
County Government Act	<p>Section 5 outlines the responsibilities of a county government to include county legislation in accordance with Article 185 of the Constitution</p> <p>Section 8 explains the role of the county government which include to enact county legislation and perform roles set out under Article 185 of the Constitution</p> <p>Section 15(1) gives every person a right to petition a county assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation</p>

Importance of participation in the legislative process

- The involvement of citizens in policymaking is crucial to deepening good governance and strengthening implementation.
- Results in better outcomes and governance. For instance, government agencies can make better and more realistic decisions that reflect public interests and values which are better understood by the public.
- Citizens develop long-term capacity to solve and manage challenging societal issues thus overcoming longstanding differences and misunderstandings.
- Decisions are made with comprehensive information in the form of additional facts, values and perspectives, which are obtained through public input.

- Public participation improves the relationship between the public and the decision-makers. For instance, they become better communicators and can explain the decisions made as well as the rationale behind them in ways that relate to the citizens' values and concerns.

Stages in the Legislative law-making Process: National Level

The National Assembly is mandated to make laws and exercises its legislative power through Bills passed by the House and assented to by the President.

A legislative proposal or a Bill generally seeks to introduce a new legislation, amend, or repeal existing law(s).

A legislative proposal must have a sponsor to be introduced in the House.

A member or a Committee of the National Assembly wishing to introduce a Bill in the House has to submit the legislative proposal to the Speaker for approval. The legislative proposal is accompanied by a memorandum of objects and reasons. The memorandum contains a statement of—

- a) objects and reasons of the Bill.
- b) delegation of legislative powers and limitation of fundamental rights and freedoms.
- c) whether the Bill concerns county governments
- d) financial implications and if the expenditure of public moneys will be involved should the Bill be enacted, an estimate, where possible, of such expenditure.

Who may introduce a Bill?

- ☐ A Parliamentary Party- introduced by the leaders or subsequent deputies of either the majority or minority party.
- ☐ The Executive- introduced in the name of the minority/majority leader or their subsequent deputies.
- ☐ Members of the National Assembly-introduced in the name of the member sponsoring the Bill.
- ☐ A Committee of the House- introduced in the name of the chairperson or a member chosen by the committee.
- ☐ A member of the public

Upon publication, a Bill follows the following process:

First Reading:

- This is when a bill is introduced to a legislature. It is assigned a tracking number and immediately assigned to a committee
- The Bill is introduced in the House for the first time by way of reading the Title of the Bill by the Clerk. No debate or vote arises at this stage. Upon being read the first time, the Bill stands committed to the relevant Departmental Committee for consideration.
- The Committee facilitates public participation on the Bill through appropriate mechanisms
- The Committee takes into consideration the views and recommendations of the public while considering the Bill and while preparing its report to the House. The Committee proceeds to scrutinize the Bill by calling in the sponsor of the Bill, inviting various stakeholders and later compiles a report to the House with any specific proposed amendments which are later considered in the Committee of the Whole House.

Important Pointers

Public participation at this stage is facilitated by the following means:

- inviting submission of memoranda.
- holding public hearings.
- consulting relevant stakeholders; and
- consulting experts on technical subjects.

Second reading:

- This is the stage of the legislative process where a draft of a bill is read a second time
- The merits and any demerits of the Bill of the Bill, including its principles, objects and how its enactment into law is likely to affect the general citizenry is debated
- A Bill originating in the National Assembly but which is not seconded is withdrawn
- The Speaker allows the proposer to respond to any issues raised by the House and then puts the question, that is, causes the House to vote, to determine whether the Bill moves to the next stage.

Report Stage

- Upon resumption of the House to plenary, the report is made to the House which, following a procedural Motion, votes on it.
- Member may, with reasons, also move the House to resolve itself into a committee again to reconsider any specified clauses of the Bill. This is known as re-committal.

Third Reading:

- A Bill is read with all amendments and given final approval by the legislative body
- Committee considers a Bill on clause-by-clause basis. The Committee is presided by the Deputy Speaker or any member of the Chairpersons Panel
- The Committee of the whole House approves clauses and any schedules of the Bill with or without amendments. At the conclusion, the Committee, through the Chairperson, immediately submits a report to the House seeking the approval of the House
- The amendments in the Bill, at this stage, may be acceptable, if it seems likely to render it more acceptable, practical, or efficient without having to severely deviate from its primary principles and objectives.

Presidential Assent:

- This is the formal method by which the head of the Executive arm of government completes the legislative process by formally assenting or giving his consent to an Act of Parliament.
- Once a Bill has been passed by the House, the Speaker presents it to the President for assent in a form known as the Vellum. The President may, within fourteen days: (a) assent to the Bill; or (b) refer the Bill back to the House with a memorandum outlining his reservations.

Important Pointer

Commencement:

This is where an Act of Parliament provides in text a specific timeline within which it will come into effect. In other instances, it will indicate that it will come into effect on a date to be notified. In such cases, after the Act has received Presidential Assent, notification of the date of its coming into effect is given through a legal notice usually by the Minister for the time overseeing the matters with which the Act is concerned.

Stages of the Law-making process: County Assembly

Under the Constitution, the sovereign people of Kenya delegate legislative authority to Parliament and to the County Assemblies (Art. 1). Legislative authority is the power to make, amend or repeal the law.

Below, is a summarized version of the law-making process in the County Assembly:

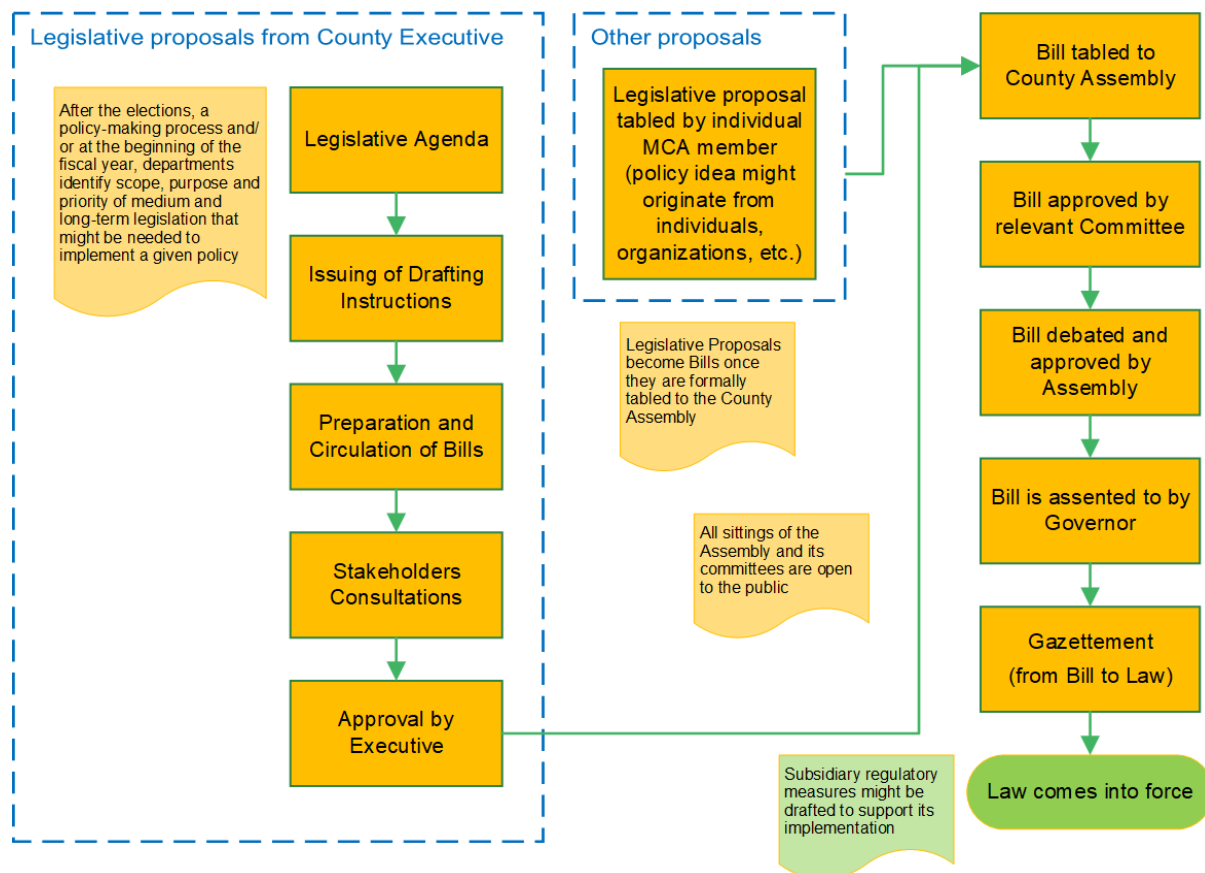
Who may introduce a Bill?

- Any member or committee of the County Assembly
- Relevant committee of the County Assembly
- County executive committee

The Bill must have a title and the subject matter of the statute to be enacted.

A Bill shall be published by including the Bill as a supplement in the county Gazette and the Kenya Gazette.

A Bill passed by the county assembly to the governor



Tools for Participation in the Law and Policy Making Processes

Access to Information

Access to Information is a crucial component to effective public participation. Usually, Government passively provides citizens with access to official documents upon their request- for instance under provision of a freedom of information law. Actively, governments can take the initiative to inform citizens on law and policymaking through a variety of information products or publications.

There are several tools that citizens can utilize to obtain information on law and policy making processes. These include:

i. The Kenya Gazette

The Kenya Gazette is an official publication of the government of the Republic of Kenya, a government gazette.

It contains notices of new legislation, notices required to be published by law or policy as well as other announcements that are published for general public information. It is published every week, usually on Friday, with occasional releases of special or supplementary editions within the week

The Kenya Gazette can be obtained through: https://kenyalaw.org/kenya_gazette/

ii. The Parliament Website <http://www.parliament.go.ke/>

- <http://www.parliament.go.ke/the-national-assembly>
- <http://www.parliament.go.ke/the-senate>

The Senate and the National Assembly post invitations to submit memoranda.



REPUBLIC OF KENYA
13TH PARLIAMENT- THIRD SESSION (2024)
THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118(1) (b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

- 1. THE PUBLIC RELATIONS AND COMMUNICATION MANAGEMENT BILL [NATIONAL ASSEMBLY BILL NO. 17 OF 2024];**
- 2. THE BREASTFEEDING MOTHERS BILL [NATIONAL ASSEMBLY BILL NO. 8 OF 2024];**
- 3. THE UNIVERSITIES (AMENDMENT) BILL [NATIONAL ASSEMBLY BILL NO. 16 OF 2024]**

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and National Assembly Standing Order 127(3) requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Public Relations and Communication Management Bill (National Assembly Bill No. 17 of 2024); the Breastfeeding Mothers Bill (National Assembly Bill No. 8 of 2024); the Universities (Amendment) Bill (National Assembly Bill No. 16 of 2024); were Read a First Time on 25th April 2024 and 2nd May 2024 respectively and thereafter referred to the relevant Departmental Committees for consideration and reporting back to the House;

IT IS NOTIFIED THAT:

One can also follow the Parliament proceedings by reading the daily hansard

- <http://www.parliament.go.ke/the-senate/Hansard>
- <http://www.parliament.go.ke/the-national-assembly/house-business/hansard>

iii. Newspapers e.g. Nation Newspaper and the Standard

iv. Social Media Platform e.g. Twitter, Facebook etc.

- Some of the useful social media handles include: @MzalendoWatch, @NAssemblyKE, and @Senate_KE

Public Participation –Get Involved!.

In most cases, participation is initiated once a Bill has been introduced and upon referral by the relevant Committee. Thereafter, the committee advertises the same in the media requesting for public views on the bill. Similarly, it ensures and facilitates that public participation takes place through the appropriate mechanisms as highlighted below:

a) Inviting Submission of Memoranda

Also known as a briefing note, a memorandum is a written report prepared for a person or committee to give them information about a particular matter. These submissions are conducted when the National Assembly is considering Bills, statutory instruments, budget estimates or conducting an inquiry. Additionally, the submissions can happen when conducting approval hearings or processing removal from the office of a public officer to determine their suitability or otherwise.

The procedure is;

- A notice is published detailing the contents of a proposed bill, what it entails, the stages it has gone through and how to access it. Similarly, the notice also outlines the relevant committee responsible for facilitating public participation. Given the submissions are mostly provided in written form, the notice also provides the address to which the proposals could be sent physically and virtually, including a deadline for submission.
- Most of these notices are published in the Kenya Gazette and local newspapers targeting interested stakeholders to take part in the law-making process by providing their views and recommendations.

b) Holding Public Hearings

This is organized to gather public opinions and concerns; public hearings can be defined as open hearings of government officials and citizens. Here, the citizens offer their comments before the legislative body decides on a specific matter. They provide an opportunity for face-to-face engagement between members of Parliament and citizens through which instant feedback and observation of the state of affairs can be received.

In Kenya, committees can undertake public hearings through meetings in and outside Parliament and inspection visits of projects, where the members of the public are free to attend committee meetings.

c) Consulting Relevant Stakeholders

This two-way controlled communication method is designed to keep the concerned parties/ citizens engaged and satisfied. Stakeholders involved in the law-making process are those directly affected or that can offer solutions.

During this period, all relevant information crucial to decision-making should be provided to enhance credibility and accountability. Similarly, the stakeholders are invited in time and allowed sufficient time to prepare for their oral or written presentations.

d) Petitions

Article 119 of the Constitution provides that every person has the right to Petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.

A petition must:

- i. Be handwritten, printed or typed.
- ii. Be in English or Kiswahili and be written in respectful, decorous and temperate language.
- iii. Be free of alteration in its texts.
- iv. Be addressed to the House.
- v. Have its subject matter indicated on every sheet.

- vi. Indicate whether any efforts have been made to have the matter addressed by the relevant body and whether there has been any response.
- vii. Indicate whether the issues in which the petition is made are pending in any court of law, constitutional or legal body.
- viii. Conclude with a clear, proper and respectful prayer, reciting the definite object of the petitioner or petitioners regarding the matter to which it relates.
- ix. Contain the names, addresses, identification numbers, signatures or a thumb impression of the petitioner or of every petitioner, where there is more than one petitioner.
- x. Contain only signatures or thumb impressions, as the case may be, and addresses and identification numbers written directly onto the petition and not pasted thereon or otherwise transferred to it.
- xi. Not have any letters, affidavits or other documents annexed to it. However, letters, affidavits or other documents must be attached if the petition is for the removal of a member of a Constitutional Commission or holder of an Independent Office; as well as in cases where the petitioner has stated that efforts have been made to have the matters raised in the petition addressed by a relevant body or that the matters raised in the petition are pending before court.
- xii. In the case of a petition presented by a Member on behalf of a petitioner, be countersigned by the Member presenting it.
- xiii. Be signed by the petitioner or if the petitioner is unable to sign, by a witness in whose presence the petitioner shall make his or her mark on the petition.

How to submit Petitions:

- i. The Petition is submitted by the Petitioner to the clerk and presented to the House by the Speaker or by a Member of Parliament chosen on behalf of the petitioner and approved by the Speaker.
- ii. The Petition is then reviewed by the Clerk within seven days after it is submitted to ascertain whether it meets the requirements of the Standing Orders and the law.
- iii. If the Petition does not comply the Clerk gives directions to ensure it is amended to comply with the requirements.

- iv. Once a Petition satisfies the given requirements, the Clerk forwards it to the Speaker to authorize its tabling in the House.
- v. A member who presents the petition on behalf of a petitioner must give the clerk two days' sitting notice of intention to present the petition.