



29th April 2025

The Rt. Hon. Moses Masika Wetang'ula, EGH, MP
Speaker of the National Assembly
Parliament Buildings
Nairobi, Kenya

Dear Rt. Hon. Speaker,

RE: SUBMISSION ON THE PUBLIC PARTICIPATION BILL, 2025

I write to you on behalf of the Open Institute to respectfully submit our observations and proposed amendments to the Public Participation Bill, 2025, which is currently before the National Assembly.

The Open Institute is deeply committed to promoting citizen engagement and open governance in Kenya and across Africa. We commend the National Assembly for taking this critical step to institutionalise public participation as a cornerstone of our democracy. Upon review of the Bill, we have identified areas where its provisions could be further strengthened to ensure greater inclusivity, accessibility, transparency, and accountability, in line with constitutional principles and emerging best practices.

Attached to this letter is our formal submission, which includes proposed amendments accompanied by detailed justifications. These proposals aim to ensure that the right to public participation is not only protected but also meaningfully realised for all citizens across Kenya. We trust that our proposals will be useful to the House and stand ready to offer any further clarifications or support that may be required.

Thank you for your leadership in championing citizen engagement and democratic governance.

Yours faithfully,

Al Kags
Executive Director

General Observations

The Open Institute commends the drafting of the Public Participation Bill, 2025 as a timely and necessary step towards strengthening Kenya's democratic foundations. The Bill captures important intentions by seeking to formalise public participation processes across different arms and levels of government.

However, upon close review, we observe that while the Bill outlines broad mechanisms for participation, it does not yet go far enough in guaranteeing inclusivity, accessibility, transparency, and accountability in practical terms. Many provisions rely heavily on the discretion of responsible authorities without setting clear minimum standards or enforcement mechanisms, which could inadvertently weaken the quality of participation and open space for token compliance.

There is also a missed opportunity in the current draft to fully embrace the realities of Kenya's digital society, where online platforms and mobile technologies increasingly shape information access. Strengthening the Bill through specific, structured requirements — as proposed in our submission — would not only align it more firmly with constitutional principles under Article 10 but also help ensure that public participation becomes a substantive, citizen-centred practice embedded in all aspects of governance, rather than a procedural formality.

Proposed Amendments and Justifications

Amendment 1: Clause 4 – Objects of the Act

Proposed Amendment: Insert a new paragraph immediately after paragraph (c):

"(d) to give effect to Article 10 of the Constitution and to internationally recognised principles of public participation, in a manner complementary to Kenya's constitutional framework, including—

- i) the International Association for Public Participation (IAP2) Core Values;
- ii) the pillars of access to information, participation, and justice as outlined in the Aarhus Convention; and
- (iii) the OECD Guidelines for Citizen Participation."

Justification:

This amendment broadens the legal and philosophical foundations of the Act by explicitly linking Kenya's national goals with global standards for public participation. By referencing internationally accepted principles, Kenya positions itself as a thought leader in Africa and globally, signalling its seriousness about democratic governance. Far from replacing the Constitution, these international models complement and enrich Kenya's domestic values. This integration presents Parliament with a significant opportunity to enhance Kenya's global image, improve its governance indices, and provide responsible authorities with clear benchmarks to enhance their public participation efforts.

Amendment 2: New Clause 5A – Principles of Public Participation

Proposed Amendment: Insert a new clause immediately after Clause 5:

"5A. In conducting public participation, responsible authorities shall ensure—

- (a) timely engagement at the formative stages of decision-making;
- (b) accessibility for persons with disabilities through reasonable accommodations, including physical access, communication aids, and support services;
- (c) provision of information in Kiswahili, English, and dominant local languages, as appropriate;
- (d) mechanisms to promote gender parity and youth inclusion, including targeted outreach activities; and
- (e) use of both traditional and digital participation channels, with accommodations for low-connectivity communities."

Justification:

Formalising principles of participation ensures that engagement is not left to discretion, but becomes standard, inclusive, and legally predictable across all government agencies. Early-stage engagement enables citizens to shape policies meaningfully, rather than merely reacting to decisions already made. Provisions for language, disability, and demographic diversity actively promote constitutional rights under Articles 27 and 54 of the Constitution. They ensure that every citizen, regardless of their circumstances, is empowered to participate in the country's development. By doing so, Parliament will reinforce equality, inclusivity, and active citizenship — critical foundations for long-term national stability and growth.

Amendment 4: Clause 11 – Functions of the Registrar

Proposed Amendment: Insert a new subsection (3) into Clause 11:

(3) The Registrar shall—

- (a) Maintain a national public participation portal to track ongoing, upcoming, and completed consultations;
- (b) conduct biennial capacity assessments of public institutions involved in public participation;
- (c) establish and operationalise county liaison offices within twenty-four months of commencement of this Act; and
- (d) Submit an independent annual budget request to Parliament to support public participation activities.

Justification:

Effective public participation requires strong coordination, consistency, and oversight. Empowering the Registrar to maintain a national portal makes participation processes visible, verifiable, and easier for citizens to access. Regular institutional assessments ensure that weaknesses are identified early and addressed systematically. Establishing county offices supports the principle of devolution under Article 174(f) of the Constitution, promoting equitable access to participation opportunities. Providing the Registrar financial independence through direct budget requests protects the office's operational integrity and ensures that citizen engagement efforts are not subjected to political interference or neglect due to resource constraints.

Amendment 5: Clause 15 – Publication of Proposals and Notices

Proposed Amendment: Delete Clause 15(b) and replace with:

(b) publicise the notice—

- (i) in a newspaper with nationwide circulation; and
- (ii) through at least two dominant social media platforms commonly used within the area of intended impact, ensuring accessibility to the widest possible audience;

Insert a new paragraph immediately after Clause 15(d):

- (e) ensure that all public participation proceedings are, where practicable, broadcast live through online platforms, and that recordings of the proceedings are made publicly accessible for a minimum period of six months.

Justification:

This amendment modernises public communication practices, recognising the shift in how Kenyans access information. Traditional newspapers alone no longer guarantee wide reach; integrating dominant social media platforms maximises access, particularly among youth and rural populations. Broadcasting proceedings live promotes transparency, allows citizens to observe the process in real-time, and provides an enduring record of consultations, thereby deepening public trust. These adjustments align with global best practices for open government and will greatly enhance Parliament’s reputation for openness, accountability, and citizen inclusivity.

Amendment 6: Clause 16 – Public Participation Reports

Proposed Amendment: Insert a new subsection (4) into Clause 16:

(4) Every public participation report shall—

- (a) quantify participation data disaggregated by gender, age, disability status, and geographical location;
- (b) document how public input influenced the final outcome of the proposal;
- (c) annex dissenting or minority opinions received during consultations;
- (d) be published within fourteen days of decision finalisation; and
- (e) remain publicly accessible for a minimum of five years.

Justification:

Transparent, detailed reporting transforms public participation from a procedural exercise into a meaningful accountability tool. Disaggregated data ensures inclusion metrics are measurable and can inform future improvements.

Documenting the influence of public input reinforces the legitimacy of government actions and protects against perceptions of tokenism. Recording dissenting views reflects a mature, confident democracy that embraces diversity of thought rather than silencing it. Early publication and long-term accessibility also enhance Parliament’s institutional memory and historical record for future decision-makers.

Amendment 7: New Clause 22A – Periodic Review of the Act

Proposed Amendment: Insert a new Clause 22a immediately before Clause 23:

22A.

(1) Parliament shall review the operation and effectiveness of this Act every five years, taking into account—

- (a) changes in technology and communication platforms;
- (b) emerging best practices in participatory governance; and
- (c) Demographic shifts based on the most recent national census.

(2) In the event of delay, the Registrar shall submit a public report recommending administrative improvements pending the formal legislative review.

Justification:

A periodic review clause embeds resilience and adaptability within the law itself. It acknowledges that technology, social behaviour, and citizen expectations evolve rapidly, and that governance structures must evolve accordingly. A five-year review cycle balances the need for stability with the need for timely responsiveness. Empowering the Registrar to submit interim improvement reports ensures the system can adapt administratively even when legislative timelines are delayed, preserving momentum towards stronger citizen engagement practices.

Amendment 8: Schedule – Public Notice Template

Proposed Amendment: Amend the Public Notice template to:

- include dissemination through designated social media platforms; and
- inform the public of the availability of live-streamed proceedings and archived recordings.

Justification:

Standardising the notice template to include digital dissemination ensures consistent implementation across responsible authorities. Making live-stream and archive details mandatory in the notice fosters transparency and improves citizen engagement by lowering participation barriers, especially for persons with mobility limitations or those in remote areas. This will help Parliament demonstrate a strong commitment to broad-based citizen involvement in public affairs.

Final Observations

As a final observation, we respectfully highlight the need for the Public Participation Bill, 2025, to fully reflect Kenya's rapidly changing information environment. Traditional newspaper circulation has declined sharply, with fewer than 200,000 copies sold daily nationwide. In contrast, digital platforms dominate the communication space: by December 2024, Kenya had over 17 million Facebook users — equivalent to 28.5% of the total population — with the largest demographic being young people aged 18-24 years (38.2%), closely followed by those aged 25-34 years (34.6%). Facebook remains the most widely used social media platform in Kenya, accounting for 57.1% of all social media users. In early 2025, Google's advertising data also indicated that YouTube had 11 million users nationwide.

These figures demonstrate that millions of Kenyans, particularly young people, are increasingly relying on digital channels for news, civic engagement, and daily communication. Accordingly, the Bill must go beyond traditional newspaper notices and mandate the use of dominant social media and digital platforms to ensure broad, equitable, and effective public participation. Participation must be made truly accessible — not just to the few who can buy newspapers or attend physical meetings, but to the many who engage daily online.

Furthermore, it is not enough for the Bill to simply invite citizen participation; it must establish robust, transparent mechanisms to demonstrate that public feedback is genuinely reviewed, considered, and incorporated into final decisions. Citizens must be able to trace the impact of their voices — to see clearly where their contributions shaped outcomes, and where they were acknowledged, even if not adopted. Public participation without transparency on feedback risks becoming a hollow ritual, undermining public confidence rather than strengthening it. A credible feedback loop is essential if we are to move from procedural participation to real, meaningful engagement.

We commend the National Assembly for leading this important legislative effort and respectfully urge that this opportunity be fully seized — to enshrine a modern, inclusive, transparent, and accountable framework for public participation that will deepen Kenya's democracy, strengthen the legitimacy of public institutions, and inspire lasting trust between citizens and their government.