

Legal and regulatory framework on public participation

Public participation is a democratically accepted practice which entails the involvement of people in the making of a decision which has the likeness of affecting them in one way or another. The Constitution of Kenya guarantees the rights of citizens to be involved in decision-making processes. Article 1 recognizes that all sovereign power belongs to the people of Kenya, and this sets the provision for the involvement of people in decision-making.

Article 10(2) of the constitution recognizes the participation of the people as a national value and principle of good governance and sets the requirement for Parliament to facilitate public participation and involvement in the legislative and other businesses of Parliament and its Committees.

The importance of public participation is intended to enable the citizens to exercise their democratic rights in decision-making on public policy. The citizens are already involved in decision-making indirectly through their elected Members of Parliament and Members of the County Assemblies and their participation in public participation gives them one opportunity to influence decision-making in public policy if their aspirations may not be represented by their elected representatives.

Public participation is essential in influencing decision-making processes on public finances.

Chapter twelve of the Constitution recognizes public participation in financial matters as a principle that should guide all aspects of public finance in Kenya.

Public participation is imperative as it bridges the gap between those making decisions and consumers of the decisions, as it presents them with an opportunity to meet on a level field where the consumers of the decisions feel included in the making of decisions and thus will contribute towards the realizations of the decisions made.

Regarding public participation in public finance, it is the mandate of Parliament and its committees to ensure that the citizens participate in the budget-making process as envisioned in section 207 of The Public Finance Management Act, 2012. Public participation is exercised at the national and county level in Kenya.

At the national level, Parliament has developed a fact sheet number fourteen (14), and it details the process of public participation in the legislative process.

Public participation at the County level is premised on the need for accountability, transparency, open governance and citizen involvement in the affairs of the devolved units. The County Government Act, 2012 sections 87 and 91 provides the principles of citizen participation in county governments.



Public participation in practice

Public participation entails the involvement of those affected by a decision in the decision-making process. Public participation is premised on the need for the contribution of public members to influence the decision being undertaken and for a balance in making decisions that are best fitted for all involved actors in decision making including the policymakers. For public participation to be meaningful, decision-makers must equip the citizens with the necessary information and data to enable them to make meaningful decisions that reflect their will, priorities, and needs from a point of knowledge and how those decisions will impact their lives on a day-to-day basis. Citizens have a right to present their generated evidence and input in public participation. The involvement of the citizens in the decision-making process helps them have trust in their governments and fulfill their constitutional obligations.

Public participation in Kenya is majorly undertaken through various platforms that are best suited to giving the citizens a chance to engage in the decision-making process. The most used platforms for public participation include town hall meetings, budget preparation and validation fora, public hearings, parliamentary committee hearings, county assembly committee hearings, submission of petitions and written memorandums, and following parliamentary and county assembly proceedings online. With changing times, public participation has evolved, and Information Communication Technology (ICT) -based platforms have become a major platform for public participation. Such ICT-based platforms include traditional television and radio programs and social media platforms such as X (formerly Twitter), X spaces, Meta (formerly Facebook), TikTok, platforms such as Zoom, Google Teams, and other virtual platforms. The adoption of ICT-based platforms is necessitated by the need to ensure more citizens who are not able to attend in-person public participation forums can engage in public participation through virtual platforms.

One important element of public participation is the citizens' involvement in public finance. Citizen involvement in public finance is geared towards promoting accountability, transparency, and openness in the national and county level decision-making process regarding taxation, revenue-raising measures, equitable revenue sharing formula between the two levels of government, the budget-making process for equitable development, use of natural resources, public borrowing and its prudent use of borrowed money, and general economic development.

“Open Budget Survey 2023, by International Budget Partnership , revealed that public participation in the budget process was rare, with a global average score of 15%.”

Public participation in practice

More specifically, citizens' participation in the budget-making process provides opportunities for both levels of government to share information about how they intend to use public resources and how the citizens can be part and parcel of the decision-making process.

The International Budget Partnership highlights the importance of public participation in ensuring budget transparency through its annual Open Budget Survey (OBS) study. In its 2023 OBS study, the findings revealed that public participation in the budget process was rare, with a global average score of 15%. This poor performance was caused by, among others, the lack of open public participation mechanisms across all the budget stages. In the case of Kenya, the study revealed that citizens' participation in the sector hearings only happened at the national level, and thus citizens' voices from across the 47 counties were not fully included in the budget sector hearings. Inclusive involvement of citizens in the sector hearings would make it easy for citizens to meaningfully participate in the subsequent budget-making stages at both levels of government.

For citizens to meaningfully take part in public participation in the budget-making process, access to budget information that citizens can easily understand, and use is vital. The timeliness in the availability of budget documents on the county and national governments' websites enables the citizens to have ample time to read through the budget documents, analyze the budgetary allocations broadly and sector-specific, understand the priorities of the government and rationale behind the allocations and make informed submissions during public participation or public hearing forums.



Caption: Public hearing on Budget Estimates for FY 2024/25 at Ronald Ngala Social Hall, Mombasa.

Public participation in public finance helps in making the figures in the budgets make sense to the citizens and the citizens can own the process and decisions from a public participation forum. The County Budget Transparency Survey (CBTS) conducted annually by the International Budget Partnership Kenya, provides a detailed trend analysis of how public participation shapes the budget-making process and in particular the level to which county governments provide opportunities for the public to engage across the budget cycle. According to the findings of the CBTS 2023, reporting and documenting information on public participation remains a challenge for most counties in Kenya.



Caption: Public hearing on Budget Estimates for FY 2024/25 in Taita- Taveta county.

Reflecting on Public participation in budget estimates for the financial year 2024/2025

Article 118(1)(b), Article 221(4) and (5) of the Constitution of Kenya, Article 39 (2) of the PFM Act, and National Assembly Standing Order 207 mandates the Budget and Appropriations Committee (BAC) of the National Assembly to discuss and review the budget estimates and make recommendations to the National Assembly considering the views of the public on the proposed recommendations. This constitutional provision which was made public through a website notice on schedule for public hearings by the Budget and Appropriations Committee of the National Assembly on revenues and expenditures for the financial year 2024/25, lay the foundation of this article.

On 15th May 2024, the Coast Regional Budget Hub joined hundreds of residents of Mombasa County in the public hearings for revenue and expenditures for the financial year 2024/2025, convened by the BAC at Ronald Ngala Hall in Mombasa City. The public hearing was a constitutional requirement to provide an opportunity for the citizens in Mombasa County to give their inputs for consideration by National Assembly Budget and Appropriation committee (BAC) for the National Budget Estimates for the financial year 2024/2025.

Same forums were held in Kilifi and Taita-Taveta counties, as indicated in the public hearing schedule.

As earlier indicated, public participation whether at the county or national level, has not been without challenges, ranging from mobilization, communication, facilitation and feedback mechanisms, pre, during and post public participation. There is need to differentiate between public participation as a process or deliberation and that is where there is missing link.

In the context of this public hearing that happened in Mombasa County, the BAC members read in general, the contents of the budget estimates for the financial year 2024/2025, that is, allocations per sector, but without breaking down allocations per sub-sectors according to recurrent expenditure and development expenditure.

It was expected that the facilitators of the public hearings would start by explaining to the participants the key decisions at hand, especially for the sake of the public members who had not engaged or were not conversant with budget discussions.

S.N.	COUNTY	DATE	VENUE	S.N.	COUNTY	DATE	VENUE
1	Mombasa	Wednesday, 15 th May, 2024	Ronald Ngala Hall	11	Kisumu	Wednesday, 15 th May, 2024	Gita Community Hall--Kajulu ward, Kisumu East Sub County Kisumu County
2	Kilifi	Friday, 17 th May, 2024	Juwaba Hall	12	Nyamira	Friday, 17 th May, 2024	Kebirigo High School Hall, in West Mugirango constituency
3	Machakos	Wednesday, 15 th May, 2024	Machakos Social Hall	13	Kakamega	Wednesday, 15 th May, 2024	Salvation Army Kakamega, Citadel Hall.
4	Taita Taveta	Friday, 17 th May, 2024	Wundanyi CC HALL	14	Vihiga	Friday, 17 th May 2024	Vihiga Friends Resource Centre.
5	Kiambu	Wednesday, 15 th May, 2024	Kiambu Institute of Science and Technology, Kiambu Town	15	Meru	Wednesday, 15 th May, 2024	Massa polytechnic
6	Muranga	Friday, 17 th May, 2024	Mathioya Constituency at Kiriaimi CDF office Hall.	16	Isiolo	Friday, 17 th May 2024	Kina social hall
7	Nakuru	Wednesday, 15 th May, 2024	CDF Office Grounds Gilgil Constituency	17	Mandera	Thursday 16 th May, 2024	Granada Hotel
8	Baringo	Friday, 17 th May, 2024	Baringo South Constituency- Kefri - Marigat	18	Homabay	Wednesday, 15 th May, 2024	Kabunde Social Hall, Homa-Bay Town
9	Kericho	Wednesday, 15 th May, 2024	ACK Diocese of Kericho Grace Conference Center	19	Turkana	Wednesday, 15 th May, 2024	Loyoyo Hall, Lodwar
10	Narok	Friday, 17 th May, 2024	Mungu Tulinde Hall	20	Nairobi	Friday, 17 th May, 2024	DCC Embakasi Youth Centre and Dagoretti South Empowerment Centre, Riruta.

Schedule for public hearings on budget estimates

For instance, the decisions the BAC was engaging around were on allocations below the programs/sectors, at the national level. What was surprising is that the BAC representatives stated that Mombasa had been allocated and was set to receive Kshs. 13.5 billion from the National Government overall and was exclusive of the county exchequer allocation from the national government for the financial year 2024/25. The projects read were as follows:

- Kshs. 4 billion allocated for Mwache dam.
- Kshs. 2 billion allocated for Mombasa Port Road.
- Kshs. 2 billion allocated for Gauge bridge.
- Kshs. 2 billion allocated for the Dongo Kundu Bridge, and
- Kshs. 3 billion allocated for Mombasa Port area development.

It was at this level, where the public hearing took a shift, when the public members were asked to start proposing new projects! According to the Kenyan budget calendar, the discussions around projects that should be included in the budget happens somewhere around September during sector hearings at the national level. At the level we were engaging, it was the approval stage, where the allocation at sector level had already been determined by the Budget Policy Statement (BPS) 2024 and the allocation below the sub-sector level had already been presented by the Budget Estimates 2024/25, which we were to deliberate on that material day! To make matters worse, we could not find the link between the allocations read and how they were connected with the Budget Estimates.

Drawing from past public engagement, one could tell that the facilitators of the hearing did not understand the key decision on budget that was to be discussed, as the public groups that presented their submissions according to the budget estimates were disregarded, with the BAC committee members indicating that they ought to propose new projects. This was absurd!

Whereas there is the assumption that the citizens are excited about the absolute amounts allocated, that may not always be the position, unless there is a linkage that is provided between financial and non financial information. In other words, can a public member establish a connection between the money allocated for a dam construction and how that translates to access to clean and safe drinking water?

The right requests but the wrong timing

The requests presented by some participants included the construction of toilets in the public schools in Mombasa County, repair of minor roads, construction of rehabilitation centers in each sub-county in Mombasa County, improvement of drainage systems in Bombolulu and Nyali areas, improvement of health facilities in Mombasa County and providing safety equipment to the Beach Management Unit.

Ironically, the BAC members asked the participants to propose projects whose value was more than Kshs. 100 million, above what the National Government Constituency Development Fund (NGCDF) could support. Unfortunately, neither of the requests made were informed by the budget estimates for the financial year 2024/25. As earlier indicated, this is not the time the public should propose project, as the budget is already in the approval stage!

“...neither of the requests made were informed by the budget estimates for the financial year 2024/25. “

Lessons learned. What can we learn from this public hearing to make future public hearing forums more impactful?

Things do not end wrong, they start wrong. This being my first physical engagement on National Budget Estimates, it fell short of my expectations and as outlined in the public participation guidelines and framework. However, here are some highlights that, if well implemented, could make public hearing forums at the county and grassroots levels more impactful.

1.0 Timely communication before the public participation

Timely and transparent communication is crucial for effective public participation in governmental processes. In the case of the public hearing, the late dissemination of the notice—just one day before the event—severely limited citizen attendance and the quality of submissions. For public participation to be meaningful, all logistical details, including the venue, time, and dates, should be communicated well in advance. This ensures that a broad spectrum of citizens can prepare and contribute thoughtfully to the discussions. Without timely communication, public hearings risk becoming exclusive events rather than inclusive platforms for democratic engagement.

2.0 There is a need for innovative ways of disseminating information before public hearing forums.

Effective public engagement in budget discussions requires both adequate time and accessible information. The current practice of providing voluminous documents, such as the 1,000+ page budget estimate, coupled with limited time for public hearings, hinders meaningful citizen participation. Without simplifying and disseminating these documents in advance, public hearings may appear to be mere formalities rather than opportunities for genuine dialogue and citizen input. To foster more informed and constructive public engagement, it is essential for government facilitators of public participation to distribute simplified budget summaries at least one week prior to public hearings. This would enable citizens to thoroughly review the information, leading to more insightful and productive discussions during the hearings.



3.0 Understanding the key budget decision at hand is imperative to drive meaningful public deliberations.

To make public participation truly meaningful and citizen-friendly, government actors must ensure clarity, relevance, and preparation in their approach. Citizens often enter public hearings with high expectations, which can be addressed through education and transparency about the specific topics under discussion. By clearly communicating the agenda and purpose of each public hearing in advance, and by educating the public on the specific processes involved, such as the budget-making process, governments can foster more realistic expectations and more constructive contributions. Understanding and sticking to the key budget decision is key to both government actors and public.



4.0. Mobilization and inclusion should be beyond who is in the room or invited.



Coast Regional Budget Hub team after presenting the submission on National budget Estimates 2024/25 .

The effectiveness of public hearings is heavily influenced by how citizens are mobilized to attend. For meaningful public engagement, especially on critical issues like budget estimates, it's important to ensure broad and diverse participation. Relying solely on political offices, such as members of Parliament, for mobilization may limit the diversity of voices and perspectives. Hosts of public hearings should expand their outreach efforts, using multiple channels and community networks to ensure that a wide range of citizens, including those from different backgrounds and interests, are informed and encouraged to participate. This broader mobilization leads to more representative and impactful public discussions.

5.0. Feedback mechanism post- public participation.

Effective feedback mechanisms are essential for fostering trust and ensuring that public participation is meaningful. Citizens derive satisfaction not just from attending public hearings and making submissions, but from knowing that their input is acknowledged and considered in decision-making. To enhance the impact of public participation, government actors should establish clear feedback channels that inform participants how their contributions have influenced public policy. This process not only validates citizen involvement but also encourages continued engagement in future forums.





Conclusion

Citizen participation in public hearings is crucial for shaping effective public policy, but there appears to be growing apathy towards these forums, especially when there is no monetary incentive for attendance. Public hearings are intended to be platforms where duty bearers can engage with the public, gather input, and refine policy documents accordingly. However, recent events, such as the #RejectFinanceBill2024, have highlighted a disconnect between citizen input and government action, leading to disillusionment and low attendance at these forums.

The Constitution of Kenya 2010 places great importance on citizen involvement in legislative processes, but this mandate is undermined when citizens feel their contributions are ignored. To restore faith in public participation, it is essential that citizens understand the budget-making process, public hearings facilitate meaningful dialogue, citizen submissions are genuinely considered, feedback is provided, and the significance of citizen involvement in decision-making is emphasized.

Ultimately, the future of public participation as a meaningful exercise or a mere "tick the box" activity lies in the hands of policymakers. Unfortunately, the recent public hearing on Budget Estimates for FY 2024/25 undertaken by the Budget & Appropriation committee of the national Assembly, leaned more towards the latter, serving as a procedural formality rather than a forum for meaningful engagement. This article aims to contribute to the development of more effective public hearings that truly impact the budget policy process.

For more information:

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The Coast Regional Budget Hub is a platform for Public Finance Management (PFM) practitioners that brings together regional voices for collective efforts and synergy to enhance public budgets and services across the Coast Region of Kenya. The Hub is among the four hubs: The Nairobi Eastern and Central (NEC) Hub, The Rift Valley Hub and the Lake Region Hub, established by Bajeti Hub, formerly International Budget Partnership Kenya.

The Coast Regional Hub builds communities' collective capacity to engage effectively and mobilises participation in the county, regional, and national budget-making processes. The CRBH achieves this through continuous capacity building of budget champions and communities in budget processes, research, and budget analysis for evidence-based advocacy engagement and stakeholder network-building. The Hub has over 15 budget facilitators and over 300 budget champions across the Coast.

