



THE REPUBLIC OF KENYA

LAWS OF KENYA

**THE CLIMATE CHANGE (PUBLIC PARTICIPATION AND ACCESS
TO CLIMATE CHANGE INFORMATION) REGULATIONS, 2023**

NO. 38 OF 2023

Revised and published by the National Council for Law Reporting
with the authority of the Attorney-General as gazetted by the Government Printer

www.kenyalaw.org

Kenya

Climate Change Act

Climate Change (Public Participation and Access to Climate Change Information) Regulations, 2023

Legal Notice 38 of 2023

Legislation as at 28 April 2023

By [Kenya Law](#) and [Laws.Africa](#). Share widely and freely.

www.kenyalaw.org | info@kenyalaw.org

FRBR URI: /akn/ke/act/ln/2023/38/eng@2023-04-28

There is no copyright on the legislative content of this document.

This PDF copy is licensed under a Creative Commons Attribution NonCommercial ShareAlike 4.0 License ([CC BY-NC-SA 4.0](#)). This license enables reusers to distribute, remix, adapt, and build upon the material in any medium or format for noncommercial purposes only, and only so long as attribution is given to the creator. If you remix, adapt, or build upon the material, you must license the modified material under identical terms. CC BY-NC-SA includes the following elements:

- BY: credit must be given to the creator.
- NC: Only noncommercial uses of the work are permitted.
- SA: Adaptations must be shared under the same terms.

Share widely and freely.

Climate Change (Public Participation and Access to Climate Change Information) Regulations, 2023
(Legal Notice 38 of 2023)
Contents

Part I – PRELIMINARY	1
1. Short title	1
2. Interpretation	1
3. Application of these Regulations	2
4. Guiding principles for public consultation	2
Part II – CRITERIA FOR THE CONDUCT OF PUBLIC CONSULTATION	2
5. Scope of proposed action	2
6. Opportunities for public consultation	3
7. National Climate Change Action Plan	3
8. Timelines for public consultation	3
9. Information relating to the public consultation	3
Part III – PROCEDURE FOR THE CONDUCT OF PUBLIC CONSULTATION	4
10. Notice for public consultation	4
11. Public hearing	4
12. Analysis of comments after public consultation	5
13. Analysis of non-consultation	5
14. Outcome of public consultation	5
15. Publication of decision made	5
Part IV – INFORMATION RELATING TO CLIMATE CHANGE	5
16. Maintenance of information on climate change	5
Part V – MISCELLANEOUS PROVISIONS	6
17. Database of stakeholders for public consultation	6
18. Marginalized groups	6
19. Public awareness	6
20. Reporting by Directorate	6
SCHEDULE	7

CLIMATE CHANGE ACT

CLIMATE CHANGE (PUBLIC PARTICIPATION AND ACCESS TO CLIMATE CHANGE INFORMATION) REGULATIONS, 2023

LEGAL NOTICE 38 OF 2023

Published in Kenya Gazette Vol. CXXV—No. 99 on 28 April 2023

Commenced on 30 March 2023

Part I – PRELIMINARY

1. Short title

These Regulations may be cited as the Climate Change (Public Participation and Access to Climate Change Information) Regulations, 2023.

2. Interpretation

In these Regulations unless context otherwise requires—

"Act" means the Climate Change Act ([Cap. 387A](#));

"Cabinet Secretary" has the meaning assigned to it under the Act;

"call for comments" means the notice via which the public and relevant stakeholders shall be publicly invited to review and comment on a proposed action;

"climate change duties" has the meaning assigned to it under the Act;

"comments period" means the period commencing on the date when the comments on a proposed action may be received by the responsible authority or ministry and the last date when the comments on a proposed action may be received;

"Council" means the National Climate Change Council established under section 5 of the Act;

"Directorate" means the Climate Change Directorate established under section 9 of the Act;

"explanatory memorandum" means a statement, prepared by a responsible authority that explains the purpose and operation of the proposed action and includes any documents incorporated in the proposed action by reference and indicates how they may be obtained;

"Ministry" means the ministry for the time being responsible for matters related to climate change;

"private entity" has the meaning assigned to it under the Act;

"public consultation" means the process by which a responsible authority engages the public, sector stakeholders and potential affected persons during the process of developing strategies, laws and policies relating to climate change, to get their views on the efficacy of the proposed action;

"public entity" has the meaning assigned to it under the Act; and

"responsible authority" means a public entity, private entity or the ministry that is undertaking a proposed action.

3. Application of these Regulations

- (1) These Regulations shall apply to—
 - (a) the Council;
 - (b) the Ministry;
 - (c) the Directorate;
 - (d) public entities at all levels of government with duties under section 15 of the Act;
 - (e) private entities with climate change duties under section 16 of the Act;
 - (f) any other entity conducting activities under or subject to the Act; and
 - (g) the County Governments.
- (2) Where a county government has developed its own public consultation regulations, these Regulations shall prevail pursuant to Article 191 of the Constitution in so far as any inconsistency arises in their interpretation or application.

4. Guiding principles for public consultation

- (1) When conducting public consultation under these Regulations, a responsible authority shall be guided by the following principles—
 - (a) public consultation shall be undertaken within timelines that allow constructive engagement with persons affected by the proposal;
 - (b) public consultation shall be effective and not merely procedural; and
 - (c) the contribution of the public shall impact the threshold of decision making on climate change in accordance with subregulation (2).
- (2) Public consultation shall be considered to impact on the threshold of decision making on climate change where—
 - (a) all relevant stakeholders directly affected by proposed action and the public are adequately consulted;
 - (b) the responsible authority can demonstrate that sufficient amount of feedback is drawn from the public consultation; and
 - (c) there is evidence that the feedback received from the public consultation has been considered in developing the proposed action and in the decision made pursuant to the proposed action.

Part II – CRITERIA FOR THE CONDUCT OF PUBLIC CONSULTATION

5. Scope of proposed action

- (1) A proposed action in relation to the development of strategies laws and policies on climate change shall pursuant to section 24(1) of the Act, be developed through public participation.
- (2) A proposed action by the Ministry shall include that which—
 - (a) introduces new climate change law, policy or guidelines; or
 - (b) varies or modifies existing climate change law, policy or guidelines.

6. Opportunities for public consultation

- (1) A responsible authority shall make appropriate public consultations that provide reasonable and effective opportunities for participation.

7. National Climate Change Action Plan

The Cabinet Secretary shall, in the review of the National Climate Change Action Plan pursuant to section 13(8) of the Act, conduct public consultation in the manner provided under the Act and these Regulations.

8. Timelines for public consultation

A responsible authority shall offer the public at least fourteen days from the date of the notice issued under regulation 10, to consider, consult and respond to a proposed action when conducting public consultation.

9. Information relating to the public consultation

- (1) A responsible authority shall ensure fair and equal access to the public participation process to all members of the public and stakeholders in the climate change sector.
- (2) Where some of the members of the public and stakeholders are not conversant with the official languages of the Republic, or by reason of disability are unable to participate in the process, the responsible authority shall provide—
 - (a) an interpreter who can translate the information relating to a proposed action into the local language or sign language, for the affected members or stakeholders; or
 - (b) such reasonable measures as are necessary, to ensure that the members of the public and stakeholders are capable of understanding the proposed action for purposes of giving feedback.
- (3) A responsible authority shall develop and maintain an online platform that is accessible and simple enough for the members of the public and stakeholders to access all the necessary information relating to a proposed action.
- (4) In addition to maintaining the online platform under subregulation (3) the responsible authority shall maintain the information relating to a proposed action in physical form at all the offices of the responsible authority and the County Governments for access by members of the public.
- (5) The responsible authority shall, before conducting public participation under these Regulation, prepare a public consultation concept paper relating to a proposed action which shall specify—
 - (a) the purpose of the public consultation;
 - (b) the target groups;
 - (c) the proposed duration of the conduct of the public consultation;
 - (d) the proposed means of submitting feedback; and
 - (e) the proposed schedule for the conduct of the public consultation.

Part III – PROCEDURE FOR THE CONDUCT OF PUBLIC CONSULTATION

10. Notice for public consultation

- (1) Before commencing the conduct of public consultation, the responsible authority shall publish a notice calling for comments on a proposed action in the manner set out in paragraph 1 of the Schedule to the Act.
- (2) The responsible authority shall ensure that the call for comments under subregulation (1) attains the widest reach as possible and may in addition to the methods stipulated under the Act, publicize the notice in one or more of the following ways—
 - (a) posting in social media accounts affiliated to the responsible authority and other digital communication channels;
 - (b) engaging the community on the information relating to the proposed action;
 - (c) engaging in public meetings and fora; and
 - (d) utilising any other public consultation mechanisms that have previously been employed in the locality within which public participation is to be conducted.
- (3) In addition to the information specified under paragraph 1(2) of the Schedule to the Act, the call for comments issued under this regulation shall be accompanied by—
 - (a) a summary of the proposed action;
 - (b) a statement of the basis or authority for the proposed action;
 - (c) the commencement and closing period for receiving comments on the proposed action, which shall be a minimum of sixty days in between;
 - (d) a statement of where the members of the public and stakeholders may freely access the information necessary for proper contextualization of the proposed action; and
 - (e) a description of how comments on the proposed action may be submitted as provided in—
 - (i) Form 1 set out in the Schedule for comments from an individual member of the public; and
 - (ii) Form 2 set out in the Schedule for comments from a public or private entity.
- (4) Where the notice referred to in subregulation (3) does not set out a summary of the proposed action, a Responsible Authority shall guarantee that it shall provide the proposed action at least twenty-one days before the conclusion of the comments period.
- (5) The notice calling for comments referred to this regulation shall be signed by the authorized official of the responsible authority.

11. Public hearing

- (1) Upon conclusion of the comments period, the responsible authority shall hold a public hearing.
- (2) The responsible authority shall issue a notice for a public hearing within fourteen days after the comments period.
- (3) The responsible authority shall undertake a public hearing within a realistic timeframe from the date of the notice issued under subregulation (2).
- (4) A public hearing shall be conducted subject to the prevailing health and safety legislation.

- (5) A responsible authority shall record the feedback received from the conduct of public hearing in Form 3 set out in the Schedule.

12. Analysis of comments after public consultation

- (1) Upon conclusion of the public participation exercise the responsible authority shall, in demonstrating that the feedback from the public has been adequately considered under regulation 4(2)(c), collate the comments received during the conduct of the public consultation.
- (2) After collating the comments under subregulation (1), a responsible authority shall—
 - (a) without bias, critically analyse the comments from the public consultation; and
 - (b) record the decision made on the proposed action, including the reasons for including and excluding any recommendation.
- (3) A responsible authority shall, within ninety days after the conclusion of the conduct of public participation, publish a report on the analysis of public consultation in the manner set out in Form 4 set out in the Schedule.

13. Analysis of non-consultation

- (1) A responsible authority shall conduct an analysis of non-consultation, in relation to the demographics from which the notices referred to in these Regulations were issued but the quality and quantity of comments received were insufficient.
- (2) Upon conclusion of the analysis conducted under subregulation (1), the responsible authority shall prepare a report which shall propose possible measures to improve subsequent public participation in the identified demographics.

14. Outcome of public consultation

In addition to the reports prepared under regulation 12 or 13, a responsible authority shall prepare an explanatory memorandum upon conclusion of the conduct of public consultation.

15. Publication of decision made

A responsible authority shall make available to the public, a record of the decision made after the public consultation, including the reasons for the decisions made—

- (a) on its official website; and
- (b) in its physical offices.

Part IV – INFORMATION RELATING TO CLIMATE CHANGE

16. Maintenance of information on climate change

- (1) Pursuant to section 24(4) of the Act, the Council and the Directorate, shall maintain relevant, current and accurate information on matters relating to climate change.
- (2) The information referred to in subregulation (1) shall include—
 - (a) all the strategies, laws and policies on climate change in Kenya;
 - (b) proposed actions;
 - (c) global trends in strategies, laws and policies on climate change; and
 - (d) all international instruments on climate change that are ratified by Kenya.

- (3) The Council and the Directorate may request the production of any information on matters relating to climate change held by a public or private entity, where the Council or Directorate considers such information necessary for the conduct of public consultation.
- (4) A responsible authority shall maintain the information on matters relating to climate change in physical form at its offices and may publish such information on its official website.
- (5) A responsible authority may avail information on matters relating to climate change to a member of the public upon request and in a reasonably expeditious, simple and accessible manner.
- (6) For purposes of access to climate change information, a responsible authority shall be guided by the provisions of the Access to Information Act ([Cap. 7M](#)).

Part V – MISCELLANEOUS PROVISIONS

17. Database of stakeholders for public consultation

Every Responsible Authority shall prepare and maintain a database of all the relevant stakeholders to be consulted in a standard public consultation and shall be guided by such mapping to ensure that adequate consultations have been made.

18. Marginalized groups

- (1) In undertaking public consultation, a responsible authority shall take such measures as are necessary to ensure that the following groups of people are notified of a proposed action—
 - (a) women;
 - (b) youth;
 - (c) persons living with disabilities; and
 - (d) marginalised communities.
- (2) A responsible Authority shall ensure that the database developed under regulation 17 shall include a mapping of the specialized groups of persons listed in subregulation (1).
- (3) The Directorate shall maintain records of Indigenous Knowledge Systems of different regions in Kenya and such records shall be made easily accessible to the public.

19. Public awareness

- (1) The Directorate shall sensitise the members of the public on—
 - (a) the strategies, laws and policies relating to climate change; and
 - (b) the right to participate in decision-making on the strategies, laws and policies relating to climate change.
- (2) In every two years, the Directorate shall submit a report to the Cabinet Secretary, on the steps it has taken to comply with subregulation (1) and such report shall include the steps the Directorate has taken to improve the quality of public consultation.

20. Reporting by Directorate

- (1) The Directorate shall submit a bi-annual report to the Cabinet Secretary concerning its functions in relation to public consultation and the information on climate change maintained by the Directorate.
- (2) The report under subregulation (1) shall include an assessment of the state of public consultation in the climate change sector, its challenges and recommendations for improvement.

- (3) Every two years after the submission of the report under subregulation (2), the Directorate shall develop and publish a public consultation capacity development report, which shall specify—
- (a) the means of public consultation utilized by the Directorate in the preceding two years;
 - (b) the challenges faced while conducting public consultation;
 - (c) the efforts made by the Directorate to improve the conduct of public consultation;
 - (d) the steps taken to improve the internal capacity of the Directorate; and
 - (e) comparative studies done with other jurisdictions with a view to improve the conduct of public consultation in climate change matters.
- (4) The Directorate shall ensure that the report and related records are maintained effectively and are accessible by the public in the manner specified under section 24(5) of the Act.

SCHEDULE

FORMS

FORM 1

(r. 10(3)(e)(i))

CALL FOR COMMENTS FROM AN INDIVIDUAL

Full Name/ Jina Kamili	Male/Mume Female/Mke	Age/Umri
ID Number/ Nambari ya Kitambulisho		
Phone Number/Nambari ya simu:		
E-mail address:		

<p>Highest Level of Education Attained/ Kiwango chako cha elimu</p> <p>Primary/Shule ya msingi</p> <p>Secondary/Shule ya upili</p> <p>University or college/chuo kikuu</p> <p>Post-graduate/uzamili</p> <p>Other/Nyingine Specify/taja)</p> <p>Religion/Dini:</p> <p>Christian/Mkristo</p> <p>Islam/Muislamu Hindu/Mhindi</p> <p>Other/Nyingine</p> <p>(Specify/Taja):</p>	<p>Are you living with any disability? (Please tick)/ Una ulemavu wowote?</p> <p>(Tafadhali tiki)</p> <p>Yes/Ndio No/La</p> <p>If Yes, please specify/ Kama Ndio, tafadhali taja:</p> <p>Eyes/Macho Ears/Masikio Hands/Mikono Legs/Miguu Skin/ Ngozi</p> <p>Other (Specify/Taja)</p>	
Place of Residence/Mahali Unapoishi		
County/Kaunti	Constituency/Eneo Bunge	Location/Eneo
Place of Engagement/ Mahali pa Majadiliano	Date/Tarehe	
<p>How did you hear of this exercise/ Ulipataje habari kuhusu majadiliano haya?</p> <p>Radio/ Redio</p> <p>Television/ Runinga</p> <p>Newspaper/ Gazeti</p> <p>Government officer/Afisa wa serikali Internet/Mtandao</p> <p>Other/Nyingine (Please specify/Tafadhali taja)</p>		
<p>What are your views on the proposed Regulations?* / Una maoni yapi kuhusu kanuni hizi zilizopendekezwa?</p> <p>.....</p> <p>.....</p> <p>.....</p>		

<p>What are your views on how this process has been conducted? / Je, maoni yako kuhusu majadiliano haya ni yapi?</p> <p>.....</p> <p>.....</p> <p>.....</p>		
<p>Any other comments or questions. (Please state) / Je, una maoni ama maswali mengine? (Tafadhali tueleze)</p> <p>.....</p> <p>.....</p>		
<p>*Change accordingly depending on activity under public consultation</p>		
<p>Signature:</p>		
<p>Feedback Received By: (For Official Use Only)</p>		
<i>Full Name and Signature</i>	<i>Responsible Authority</i>	<i>Date</i>

FORM 2

(r. 10(3)(e)(ii))

CALL FOR COMMENTS FROM AN ORGANIZATION

<i>Name of Organization:</i>	<i>Place of Business:</i>	<i>Date:</i>
---------------------------------------	------------------------------------	-----------------------

<p>Nature of Organization:</p> <p>Public Company <input type="checkbox"/></p> <p>Private Company <input type="checkbox"/></p> <p>Partnership <input type="checkbox"/></p> <p>Society <input type="checkbox"/></p> <p>Non-Governmental Organization <input type="checkbox"/></p> <p>Other <input type="checkbox"/> (Please Specify)</p> <p>Sector of Operation: (e.g. oil & gas, manufacturing, civil society, law, finance, technology <i>etc.</i> Please be specific.).....</p>		
<p>Official(s)/ Representative(s) present:</p>		
<i>Name</i>	<i>Title/Position of Official</i>	<i>Contact Details (Email Address)</i>
<p>What are your views on the proposed action?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>(You may write on a separate sheet of paper and attach firmly to this form)</p>		
<p>What are your thoughts on how this public consultation exercise has been conducted?</p> <p>.....</p> <p>.....</p> <p>.....</p>		

<p>Do you have other comments or questions?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>(You may write on a separate sheet of paper and attach firmly to this form)</p>		
<p>*Change accordingly depending on activity under public consultation</p> <p>Signature:</p> <p>.....</p>		
<p>Feedback Received By: (For Official Use Only)</p>		
<i>Full Name and Signature</i>	<i>Responsible Authority</i>	<i>Date</i>

FORM 3

(r. 11(5))

COMMENTS RECEIVED DURING PUBLIC HEARING BY RESPONSIBLE AUTHORITIES

FROM:	INDIVIDUAL, PRIVATE ENTITY OR PUBLIC ENTITY
TO:	RESPONSIBLE AUTHORITY
SUBJECT:	PUBLIC CONSULTATION IN RELATION TO THE PROPOSED ACTION

<p>I. Summary of public consultation feedback</p> <p>.....</p> <p>.....</p> <p>(to be accompanied by a copy of the public consultation report)</p>
<p>II. Identification of the issue requiring the relevant entity's attention</p> <p>.....</p> <p>.....</p>
<p>III. Analysis of the potential implications necessitating the relevant entity's attention</p> <p>.....</p> <p>.....</p>
<p>IV. Recommendations (proposed action points)</p> <p>.....</p> <p>.....</p>
<p>V. Justification for the proposed action points</p> <p>.....</p> <p>.....</p>
<p>Signed and stamped:</p> <p>.....</p>

REPORT ON ANALYSIS OF PUBLIC CONSULTATION

I. Introduction

Brief summary of the concept paper.

II. Evidence of Sufficient Information to the Public and Stakeholders

1. Report on how the general public and relevant stakeholders were informed of the proposed action.
2. Report on how the general public and relevant stakeholders were informed of the process of public consultation, including the timelines given to allow for consultations and comments.
3. Report on whether adequate information was availed to the public and stakeholders to enable them make informed contribution.

III. Evidence of Adequate Involvement of the Public and Stakeholders

1. Summary of the Public consultation process as it was conducted, including the Comments received through digital channels.
2. Summary of methods used in the process for collecting feedback.
3. Results of the process.
4. Challenges faced in the process.

IV. Evidence of Adequate Consultations

1. Analysis of the feedback received from the participants.
2. Responses of the responsible authority to Participants.
3. Analysis of feedback received regarding the conduct of the process, including recommendations for improvement.
4. Analysis of Non-Consultation.

V. Evidence of Collaboration - Impact of the Public Consultation on Decision-Making

1. What feedback has been incorporated into the eventual decision.
2. What feedback has been given to the public regarding the outcome of the process; including the reasons for excluding certain feedback from the eventual decision.
3. What has been the overall impact of the public consultation process on the proposed action's eventual decision.

VI. Recommendations on Areas for Improvement

1. How have the recommendations for improvement of the process received from the participants been documented or incorporated.
2. How has the responsible authority ensured that the public consultation process forms part of the education and awareness for subsequent processes.
3. How has the feedback received been relevant to other government agencies.
4. How has the said information been cascaded to the said government agencies.

VII. Conclusion