**REPUBLIC OF KENYA** 



## COUNTY GOVERNMENT OF NYAMIRA

# THE COUNTY ASSEMBLY

SECOND ASSEMBLY

THIRD SESSION

## REPORT OF THE JOINT COMMITTEE ON FINANCE AND ECONOMIC PLANNING AND JUSTICE AND LEGAL AFFAIRS

ON

## THE NYAMIRA COUNTY REVENUE AUTHORITY BILL, 2018

OFFICE OF THE CLERK COUNTY ASSEMBLY OF NYAMIRA 29<sup>TH</sup> APRIL, 2019

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#### PREFACE Mr. Speaker Sir,

Public participation in Kenya is considered a crucial pillar of the Kenyan Constitution. It promotes democracy by providing the public with the opportunity to take part in decision making processes in government thus promoting national values and principles of governance. Article 174(c) provides that the object of devolution is to: "enhancethe participation of people in the exercise of the powers of the State and in making decisions affectingthem." The centrality of public participation cannot therefore be over-emphasized.

Decision making around government revenues and expenditures has historically been shrouded in mystery and secrecy. In the past, revenue raising measures have been a preserve of government treasuries, Central Bank officials, the tax administrator and few selected technocrats. The Legislature's interface with public finances was by and large restricted.

In recent years, interest and action with regard to public participation and accountability in fiscal decision-making has increased. This surge in public participation globally can be attributed to some of the following major factors.

- (i) The growth and use of information and communication technologies around the globe.
- (ii) The growth in numbers and operational capacity of independent civil society organizations.
- (iii) Good governance.
- (iv) Numerous transition from closed, authoritarian political regimes to political contestation with separation of powers.
- (v) Introduction of modern public finance management systems and best practices around the world.
- (vi) Greater decentralization and devolution of power.

ACKNOWLEDGEMENT Mr. Speaker Sir,

The Committee wishes to value the time and extensive effort made by all parties and stakeholders who volunteered information before it including members of the public who attended and their views have been included in the final draft of this bill.

In particular and with humility, I wish to express gratitude to the Members of this Honourable Committee who expressed utmost commitment and dedication in processing this Bill.

Further, the Committee thanks the office of the Speaker and the Clerk of the County Assembly for facilitating all actions that led to the production of this report.

We profoundly appreciate the technical and professional input by the Ahadi team and the Secretariat for meticulously guiding the committee on all aspects of Bill. In the same breath, we extend gratitude to the Executive Member for Finance and Economic Planning, Trade Tourism and Cooperatives, Chief Officers and directors and other officers who attended training at Grand Royal Swiss Hotel in Kisumu.

Mr. Speaker Sir,

It is now my humble pleasure, on behalf of the committee, to present this report to this Honourable House for debate and adoption.

Signed....

Hon. Charles Mokaya Maroko,

Chairperson - Committee on Finance & Planning,

29th April, 2019.

Report of the Joint Committee on Finance & Economic Planning and Justices and Legal Affairs on the Nyamira County Revenue Authority Bill, 2019 Page 4

## **1.0 INTRODUCTION**

#### Mr. Speaker Sir,

The Constitution has placed significant responsibilities on legislatures over the management of public resources.

Legislatures have in particular received enhanced responsibility in regard to resource mobilization, allocation, monitoring and control. This is specifically anchored in *Chapter* 12 of the Constitution of Kenya, 2010 and the Public Finance Management Act, 2012.

*Article 196 of the Constitution* provides that the County Assembly should facilitate public participation and its involvement in its committees, the legislative and other business of the assembly.

#### Mr. Speaker Sir,

*Article 209 (4) of the Constitution of Kenya, 2010* confers powers on the County Governments to impose property taxes, charges and imposition of other charges for services the county provides. To facilitate these local collections therefore, it is necessary to have in place the requisite County Legislation and other necessary tools dully approved by the Assembly as provided under *Section 160 of the Public Finance Management Act, 2012.* 

#### Mr. Speaker Sir,

Pending the approval of this Bill, Nyamira County's tax regime is based on the Nyamira County Finance Act, 2018 and the Nyamira County Revenue Administration Act, 2018which provides for the taxes, levies and charges to be collected and the assessment, collection and administration of revenues respectively.

The Nyamira County Revenue Authority Bill, 2019 was received as a Legislative Proposal from Hon. Richard Onyinkwa in 2018 in this Hounarable House and thereafter, the bill was committed to the Sectoral Committee on County Finance and Economic Planning for review.

### **2.0 MANDATE OF THE COMMITTEE** Mr. Speaker Sir,

The Sectoral Committee on County Finance and Economic Planning is established under *Standing Order No. 191 of the County Assembly of Nyamira Standing Orders* provides specific mandate inter alia:-

- (a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;
- (b) Study the program and policy objectives of departments and the effectiveness of the implementation;
- (c) Study and review all county legislation referred to it;
- (d) Study, assess and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives;
- (e) Investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;
- (f) To vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order.

Further, the Select Committee on Justice and Legal Affairs is mandated under Standing Orders No. 190 (3) (d) to deal with matters on imposition of taxation.

In addition, Standing Order No. 183 (1) allows two committees to conduct joint meetings thus 'two committees of the County Assembly considering similar matters may, with the approval by Speaker, hold joint sittings'.

#### Mr. Speaker Sir,

Order No. 121 of the County Assembly Standing Orders states as follows:

(1) A Bill having been read a First Time shall stand committed to the relevant Sectoral Committee without question put.

## **3.0 COMPOSITION OF THE COMMITTEE**

#### Mr. Speaker Sir,

The Committee as currently constituted comprises of the following members: -

<ol> <li>Hon. Charles Maroko</li> <li>Hon. Abel Mose</li> <li>Hon. HezinahMokua</li> <li>Hon. Gilbert Nchore</li> <li>Hon. Charles Keganda</li> <li>Hon. DamarisMouni</li> <li>Hon. Duke Omoti</li> <li>Hon. Richard Onyinkwa</li> <li>Hon. George Mosiori</li> <li>Hon. StellahMatunda</li> <li>Hon. Irene Sese</li> <li>Hon. Carolyn Mogere</li> <li>Hon. LilianNyamweya</li> <li>Hon. Innocent Mose</li> <li>Hon. Joseph Nyarango</li> </ol>	-Chairperson Finance -Chairperson Legal -Member -Member -Member -Member -Member -Member -Member -Member -Member -Member -Member -Member -Member -Member

### 4.0 LEGAL FRAMEWORK Mr. Speaker Sir,

*Article* 209(3) *of the Kenya Constitution of* 2010 gives county governments powers to impose taxation. "A county may impose:

- *a) Property rates*
- *b)* Entertainment taxes
- c) Any other taxes that it is authorize to impose by an Act of Parliament."

Further, Section 157 of the public Finance Act, 2012 gives the county government powers to appoint receivers of revenue.

"(1)The County Executive Committee member for finance shall, in writing, designate persons to be responsible for collecting, receiving and accounting for such county government revenue as the County Executive Committee member for finance may specify in their letters of designation.

(2)A receiver of county government revenue is responsible to the County Executive Committee member for finance for ensuring that the revenue for which the receiver is responsible is collected or recovered, and is accounted for."

On the same PFM Act in section 160, the Executive Member my designate an agent to collect revenue on behalf of the county government.

"The County Executive Committee member for finance may authorise the Kenya Revenue Authority or appoint a collection agent to be a collector of county government revenue for the purposes of this Part on such terms and conditions as may be agreed in writing in accordance with regulations."

#### Mr. Speaker Sir,

Also it's worth noting that the Nyamira County Revenue Administration Act, 2018;section 17 (1) (a) allows the Executive Member to appoint an agent to collect revenue on behalf of the county government.

## 4.1 Legal Compliance

#### Mr. Speaker Sir,

The Committee has made enormous efforts to make it possible for the Bill to be considered for public participation before the report is tabled to the House.

The Committee in implementing the Constitutional requirements of *Article 174(c)*, which provides that one object of devolution, is: *"to give powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them"* undertook public participation in the 5 sub-counties as the following table.

Date	Time	Sub-County	Venue
		Borabu	• Christ the King social
			Hall
23 <sup>rd</sup> April, 2019	10:00 am		Chebilat Market
		Nyamira South	• K.I.E Hall
			• Nyamaiya DO's
			Office
		Nyamira North	Ekerenyo Social Hall
			Magwagawa Market
		Masaba North	Gesima Market
			Rigoma Market
		Manga	Manga Social Hall
			Magombo Market

This responsibility is assigned to the County Government to ensure, facilitate and build capacity of the public to participate in the governance to the county government through function 14 (*Schedule 4 Part 2*).

## 5.0 CONSIDERATION OF THE NYAMIRA COUNTY REVENUE AUTHORITY BILL, 2019 Mr. Speaker Sir,

Order No. 121 (4) of our County Assembly Standing Orders states:

The Chairperson of the Sectoral Committee to which a Bill is committed or a Member designated for that purpose by the Committee shall present the Committee's report to the County Assembly within twenty calendar days of such committal and upon such presentation, or if the Committee's report is not presented when it becomes due, the Bill shall be ordered to be read a Second Time on such day as the County Assembly Business Committee shall, in consultation with the Member or the Committee in charge of the Bill, appoint.

#### Mr. Speaker Sir,

In reviewing this Bill, the Committee held a number of sittings. During this period, the Committee took some time to review the implementation of the previous Finance Acts in order to effect informed improvements to the proposed Nyamira County Finance Bill (2), 2018. The committee made the following observations;

- a) Implementation of the current and previous Nyamira County Finance Acts, has been hindered by a myriad of challenges including lack of good will by leaders and the general public. The County government has therefore lost millions of shillings in uncollected and stolen revenue. This underperformance and theft has a negative connotation on the county's fiscal responsibility, a factor used in determining our equitable share.
- b) The County Executive has not paid attention to detail in ensuring accuracy of the Finance Bills/Acts. The Executive is therefore reminded that the Finance Bill being a legislative piece for an Act of the County Assembly law must be prepared with utmost accuracy to avoid ambiguity, repetition and contradiction of any kind whatsoever. This includes use of the legal counsel at the County Executive including the County Attorney.

### 6.0 COMMITTEE PROPOSED AMENDMENTS Mr. Speaker Sir,

Order No.126 (2) of our County Assembly Standing Orders states;

No amendment shall be moved to any part of a Bill by any Member, other than the Member in charge of the Bill, unless written notification of the amendment shall have been given to the Clerk twenty-four hours before the commencement of the sitting at which that part of the Bill is considered in Committee.

Having scrutinized the Bill and considered views of members of the committee, the general public and other stakeholders, the committee proposes the following amendments to the Bill as outlined in the schedule below.

ITEM	PRINTED	PROPOSED AMENDEMENTS
Title	Bill, 2018	Bill, 2019
	PART I	
Section 1	Act, 2018	Act, 2019
Section 2	Act, 2016	Act, 2019
	PART II	
Section 5	The Chief Executive officer	The Chief Executive Officer who shall be the secretary of the board
Section 6(a)	Assessing, collecting and accounting for all revenue in accordance with the County and national laws related to revenue	Assessing, collecting and accounting for all revenue at the sub-county level in accordance with the county and national laws related to revenue with appropriate incorporation of information technology
Section 6(b)	County	county

Section 6(c)	Combined with (d)	separate
	PART III	
Section 8(1)(a) A non-executive Chairperson appointed by the Governor with the approval of the County Assembly		A non-executive Chairperson appointed by the County Committee Member for finance with the approval of the County Assembly
Section 8(1)(c)	Combined with (d)	Separate (c) and (d)
Section (2)	While making the appointments referred to in paragraph (d) the Executive Member shall observe the principles of inclusiveness, equity, equality and protection of the marginalized as enshrined in the Constitution.	While making the appointments referred to in paragraph (e) the Executive Member shall observe the principles of inclusiveness, equity, and protection of the marginalized as enshrined in the Constitution and shall include the youth and persons living with disability.
Section 8(3)	Newly introduced	No single gender shall contribute more than two thirds of the composition of the board.
Section 9	Ex-ofiicio	Ex-officio
Section 9(a)	for his inability to perform the functions of his office by reason of mental or physical infirmity;	for their inability to perform the functions of his office by reason of mental or physical infirmity;
Section 9(b)	if he is declared or becomes bankrupt or insolvent	if declared or becomes bankrupt or insolvent
Section 9(c)	If he is convicted of a	on conviction of a criminal

Section 9(d)	criminal offence and sentenced to a term of imprisonment of not less than six monthsif, without reasonable cause to the satisfaction of the Executive Member, he is absent from six meetings of the Board in any financial year	offence and sentenced to a term of imprisonment of not less than six months if, without reasonable cause to the satisfaction of the Executive Member, he/she is absent from six meetings of the Board in any financial year
Section 9(e)	If in any particular case, he fails to comply with the provisions of the schedule	the member's failure to comply with the provisions of the schedule
Section 9(f)	for such other sufficient cause as the Executive Member may, by notice in the Gazette, specify	delete
Section 12	The remuneration of the members of the Board shall be asdetermined by the County Treasury in consultation with the Salaries andRemuneration Commission.	The remuneration of the members of the Board shall be asdetermined by the County Treasury in consultation with County Public service Board according to the circular of the Salaries andRemuneration Commission.
Section 13(3) (a)	have a degree in finance, accounting, economics, business, lawor related field from a recognized university	have a degree in either finance, accounting, economics, business, lawor related field from a recognized university
Section 13(3)(c)	satisfies the conditions of Chapter Six of the	satisfies the requirements of Chapter Six of the

	Constitution	Constitution
Section 13 (a)	<mark>insert</mark>	<mark>Must be a Kenyan citizen</mark>
Section 13(7)(b)	be removed from office by the County Public Service Board on recommendation of the Board, to the Executive Member	be removed from office by the Executive Member on recommendation of the Board, to the County Public service Board
Section 14(2) (a)	<mark>Insert</mark>	Absorb the staff on secondment or rationalization
Section 14 (2)(b)	ensure that there sufficient number of staff qualified in matters related to accounting, finance, business, law, information technology or any relevant field necessary for the better carrying out the objects and functions of the Authority].	ensure that there is sufficient number of staff qualified in matters related to accounting, finance, business, law, information technology or any relevant field necessary for the better carrying out the objects and functions of the Authority.
Section 18(3)	Not later, than fifteen days after the end .of each quarter, the Board shall submit the quarterly report to the County Treasury.	Not later, than fifteen days after the end .of each quarter, the Board shall submit the quarterly report to the County Treasury who shall submit the same report to the County Assembly.
Section 19(1)	The Board shall, within three months alter the end of each financial year, prepare and submit to the Executive Member a report of the operations of the	The Board shall, within three months after the end of each financial year, prepare and submit to the Executive Member a report of the operations of the

	Authority for the immediately preceding year. PART IV	Authority for the immediately preceding year.
Section 23 (1)	At least three months before the commencement of each financial year, the Authority shall cause to be prepared a budget of the Authority for that year	At least three months before the commencement of each financial year, the Authority shall cause to have prepared a budget of the Authority for that year
Section 23(4)	No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (5), or in pursuance of an authorisation of the Board given with prior written approval of the Executive Member.	No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorisation of the Board given with prior written approval of the Executive Member.
Section 25(2)	The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act	The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2015
Section 27(c)	<ul> <li>(c) institute civil</li> <li>proceedings for the</li> <li>recovery of tax payable or</li> <li>owing to the County</li> <li>Government; (d) to inspect</li> <li>any premises or</li> <li>information for the</li> </ul>	Separate (d) from (c)

	purposes of implementing this Act:		
Title before section 31	Public education	Civic education	
Section 31	The Authority shall provide public education and awareness to alltax payers as well as members of the public	The Authority shall provide civic education and awareness to alltax payers as well as members of the public	
Section 32	The Authority shall ensure that its services are automated as much as practicable to facilitate effective and efficient tax administration.	The Authority shall ensure that its services are automated to facilitate effective and efficient tax administration.	
Section 33	The Executive Member shall prescribe the mechanism foraddressing complaints from tax payers or members of the public inrelation to the implementation of this Act.	. (1)The Executive Member shall appoint an adhoc tribunal foraddressing complaints from tax payers or members of the public inrelation to the implementation of this Act as and when need arises. (2) The Executive Member shall establish complaint centres at each sub-county.	
SCHEDULE (s. 11)			
Vacation of office 2 (b)(i)	has been absent from three consecutive meetings of the Board without the permission of the chairperson	has been absent for three consecutive meetings of the Board without the permission of the chairperson	

MEMORANDUM OF OBJECTS AND REASONS			
Second paragraph	into law does not occasion	The enactment of this Bill into law may occasion additional expenditure of public funds.	
Part IV	provides the financial provisions of the Authority	provides for the financial provisions of the Authority	
Part V	requirements connected to revenue administration such as registration of	provides for general requirements connected to revenue administration such as registration of taxpayers, civic education, complaints among others.	

# 7.0 OBSERVATIONS/CHALLENGES AND GENERAL RECOMMENDATIONS

## 7.1 Observations / Challenges

Mr. Speaker Sir,

The table below is a tabulation of County's Revenue Targets vis-à-vis performance since inception.

Year	Printed Estimates	Revised/Targets Estimates	Achieved	Deviation from the Target	% performance
2013/14	100,000,000	100,000,000	94,025,895	(5,974,105)	94%
2014/15	219,053,554	219,053,554	104,206,184	(114,847,370)	48%
2015/16	240,958,912	240,958,912	106,981,969	(133,976,943)	44%
2016/17	274,983,801	198,230,100	93,920,087	(104,310,013)	47%
2017/18	272,456,992	253,112,676	28,000,000 (half year)	-	
2018/19	299,702,691				
Totals	1,107,453,259	1,011,355,242	399,134,135	(359,108,431)	

Source: Controller of Budget Report

#### Mr. Speaker Sir,

Based on historical trends as shown in the table above, the revenues since year 2013 have been on a downward trend. The County Government is doing poorly on revenue collections as a result, the current local revenue forecast is unrealistic, unless the county executive puts in place ingenious methods of improving local revenue collection. The unrealistic revenue forecast contravenes section 107(2g) of PFM Act 2012 on reasonable degree of predictability. The county needs to come up with practical and achievable local revenue targets by using scientific methods of revenue forecasts.

#### 7.2 Specific observations Hon. Speaker

The committee made the following observations;

- 1. THAT Nyamira County Government has seen a drop in revenue collection compared to the days of the Nyamira County Council.
- 2. THAT the Controller of Budget has provided reports on Nyamira County Government that showed poor performances in revenue collection.
- 3. THAT the way by which revenue is collected in Nyamira currently is not transparent.
- 4. THAT this Bill will ensure effectiveness and efficiency in Revenue in collection and receipt.
- 5. THAT the Bill will facilitate transparency in Revenue mobilization, collection and receipt.
- 6. THAT this Bill will assess, collect and Account for all revenue in accordance with the county and National laws related to Revenue.
- 7. THAT most towns and markets are not planned and mapped geographically.
- 8. THAT some tax payers and markets have not been remitting revenue to the county.
- 9. THAT tax payers are ignorant on revenue laws.

#### 7.3 Committee Recommendations Mr. Speaker Sir,

Given the foregoing circumstances and in an effort to address the general cross cutting issues and challenges, the committee makes the following recommendations.

- 1. The Executive Committee Member for finance should implement the Nyamira County Revenue Authority Bill, 2019 immediately its assented to.
- 2. There should be a regulation to govern the Act after the bill has been enacted.
- 3. Revenue collection to be automated to seal all revenue leakage points. (*The committee can benchmark in counties with the same capacity status as Nyamira in terms of business opportunities and population e.g. Makueni*)
- 4. Reshuffle of Revenue clerks from defunct Local Authorities who have been in office for long to dismantle revenue cartels and the County public service board should consider transition of the current staff to avoid bloated wage bill. (*Going forward, the directorate shall define the maximum period a Revenue officer will serve in a station*).
- 5. The cost of collecting revenue must be as economical as possible. (This can be achieved by doing a cost benefit analysis of the revenue collected vis-à-vis the number of revenue collectors).
- 6. The revenue collectors should be trained on etiquette as enumerated in section 26 of this bill.
- 7. The budget to consider allocating money for the authority in the financial year 2019/20.
- 8. Litter bins should be stationed in every market centres to ensure there is a conduciveenvironment for business people.
- 9. The County Government to Map all revenue streams. This will ease planning and projection of revenue collection. (have a data base of all shops, vehicles, hardwares, hotels, boda-bodasetc that operate in the county and it should be updated quarterly)
- 10. Revenue officers must be competitively sourced and must have a background in finance/economics/revenue.
- 11. The County Government should establish a one-stop revenue *'huduma'*centre at every sub-county to offer services, including issuance of permits, payment of levies, charges, penalties, etc.
- 12. The Revenue department should conduct impromptu visits to markets and revenue sites to ensure compliance and supervise revenue collection.

- 13. Monthly Revenue reports should be presented per revenue stream on the 15<sup>th</sup> of the following month. (*Article 183(3) of the Constitution of Kenya 2010* states that: The County Executive Committee member shall provide the County Assembly with full and regular reports on matters relating to the County. This is further emphasised in *Section 166 of the Public Finance Management Act (2012.)*
- 14. The County Government should put in places measures to ensure departments optimally collect revenues under their charge, and that performing departments should be motivated and commended.
- 15. The Revenue department should be adequately facilitated with vehicles designated to particular officers/sub-counties to improve mobility and efficiency in revenue collection.
- 16. Revenue officers should at all times be in branded uniforms/dust-coats and wear tags for proper identification.
- 17. All existing market committees should be disbanded and new committees be put in place. Former members of such committees shall not be eligible to contest or be re-appointed to those committees.
- 18. Backstreets in market areas should be opened and graveled to open up and expand the markets.
- 19. Existing markets should be repaired and maintained regularly.
- 20. Public amenities in market centres should, in the shortest time possible, be put in place and properly maintained for use by buyers and sellers.
- 21. Sub-County and Ward Administrators should be involved in coordination of revenue matters in their areas of jurisdiction as they are the direct representatives of the County Government in that jurisdiction.
- 22. The following Bills should be enacted for proper implementation and application of other revenue laws:
  - Agricultural Cess Bill Agriculture Committee
  - The County Valuation and Rating Bill- Lands, Housing and Urban Development Committee
  - County Trade Licensing and Trading Bill- Trade, Enterprise and Tourism Committee

This committee urges the respective committees above to move with speed and make sure the said bills are in place to facilitate effective revenue collection by the revenue directorate.

### 8.0 COMMITTEE PRAYER Mr. Speaker Sir,

It is the humble prayer of this committee, that this report is debated objectively and adopted by this Honourable County Assembly.

#### 9.0 CONFIRMATION

We, the Members of the Joint Committee on Finance and Economic Planning and Justice and Legal Affairs affix our signatures to confirm the accuracy, validity and authenticity of this report.

#### NAME

#### DESIGNATION

1. Hon. Charles Maroko 2. Hon. Abel Mose 3. Hon. Hezinah Mokua 4. Hon. Gilbert Nchore 5. Hon. Charles Keganda 6. Hon. Duke Omoti 7. Hon. Richard Onyinkwa 8. Hon. George Mosiori 9. Hon. Stellah Matunda 10. Hon. Irene Sese 11. Hon. Carolyn Mogere 12. Hon. Lilian Nyamweya 13. Hon. Innocent Mose 14. Hon. Joseph Nyarango 15. Hon. Jeliah Nyakangi 16. Hon. James Boera 17. Hon. George Abuga 18. Hon. Jeridah Yaro 19. Hon. Abigail Matini 20. Hon. Monica Mwamba 21, Hon, Raban Masira

-Chairperson Finance -Chairperson Legal -Member -Co-opted -Co-opted -Co-opted -Co-opted

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SIGNATURE

## **10.0 ANNEXTURE**

- 1. The Nyamira CountyRevenueAuthority Bill, 2019.
- 2. Public participation registers.
- 3. Advert for public participation.