

SPECIAL ISSUE

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REPUBLIC OF KENYA

**MACHAKOS COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2014

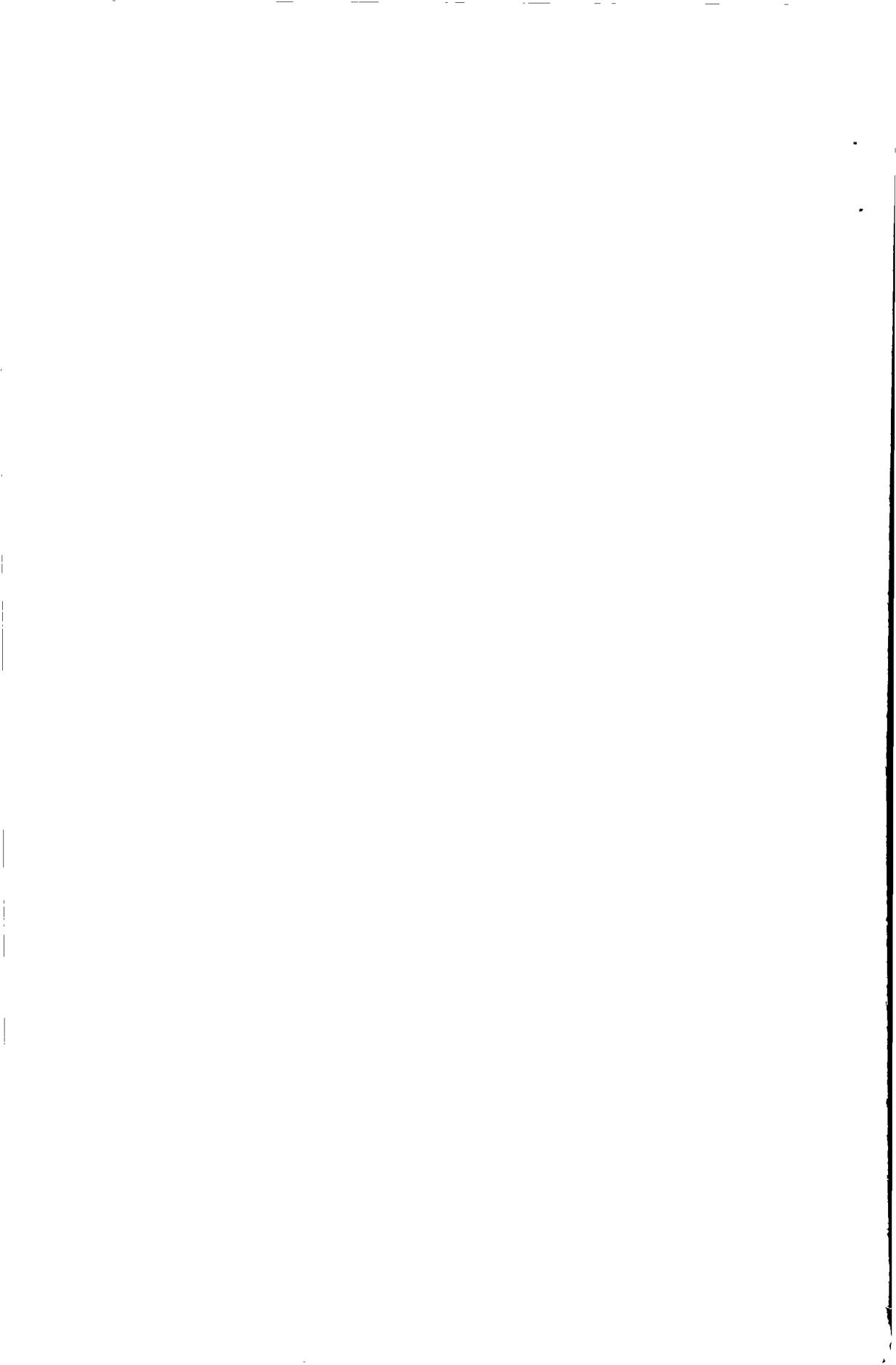
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**THE MACHAKOS COUNTY PUBLIC
PARTICIPATION ACT, 2014**

AN ACT of the Machakos County Assembly to give effect to Articles 1, 10 (2) (a), 118, 119, 174, 232 (1) (d) and paragraph 14 of Part 2 of the Fourth Schedule of the Constitution; to establish modalities and platform for public participation in the governance of the County and for connected purposes.

ENACTED by the County Assembly of Machakos as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Machakos County Public Participation Act, 2014.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“Executive Committee Member” means the Machakos County Executive Committee Member for the time being responsible for matters relating to public participation;

“County Secretary” means the County Secretary of Machakos County appointed under section 44 of the County Government Act No. 17 of 2012;

“*Gazette*” means a *gazette* published by the authority of the County Government or a supplement of such *gazette*;

“government” means the Machakos County Government;

“County public officer” means any person appointed by the Machakos County Government and holding or acting in any county public office whether paid or unpaid or on contractual or permanent terms but does not include a person engaged on a part time basis in a county public body paid at an hourly or daily rate;

“public”, when used in relation to public participation in this Act, means—

(a) the residents of the County;

- (b) the rate payers;
- (c) any resident civic organization or non-governmental, private sector or labour organization with an interest in the governance of the county;
- (d) non-resident persons who because of their temporary presence in a the County consume the services or make use of facilities provided by the government.

“public participation” means an open, democratic and accountable process of engaging a representative sector of the public in formulating policies and developing laws that affect them.

3. The objects and purposes of this Act are, to establish a legislative framework to give effect to Articles 1, 10 (2) 118, 119, 174, and 232 (1) (d) and paragraph 14 of Part 2 of the Fourth Schedule of the Constitution and in particular to provide for —

Objects and
purpose of the
Act

- (a) structures for public participation;
- (b) mechanisms, processes and procedures for participation;
- (c) handling of petitions and complaints lodged by members of the public;
- (d) procedures for notification and public comment;
- (e) holding of public meetings and hearings;
- (f) method of participation for persons with special needs;
- (g) the rights and duties of members of the public in public participation; and
- (h) promotion of public participation.

4. In addition to the requirements of section 87 of the County Governments Act No. 17 of 2012 , public participation in the government shall be guided by the following principles—

Guiding
principles.

- (a) the communities, organizations and citizens affected by any policy decision of the government shall have the right to be consulted

and shall be accorded an opportunity to participate in the process of formulating the policy;

- (b) availing participants access to the information necessary to ensure meaningful participation; and
- (c) feedback to the public on how their input is included in the policy decision.

PART II—ADMINISTRATION

5. (1) The County Secretary and the Clerk to the County Assembly shall formulate public participation guidelines for the County Executive and County Assembly respectively.

Public participation guidelines.

(2) The guidelines contemplated in subsection (1) shall make provision for the following matters—

- (a) public participation shall be undertaken within the laid down county government structures and offices;
- (b) facilitation and moderation of public participation activities to ensure they are representative of the broad spectrum of the public;
- (c) provision for civic education programmes to promote public participation in public affairs;
- (d) measures to ensure that adequate financial resources to correspond to the nature and scope of the public participation are in place;
- (e) capacity building initiatives to ensure sufficient and adequately trained staff to carry out the public participation;
- (f) ensuring reasonable time for public to input and comment on any proposals;
- (g) establish a feedback mechanism to the public including opportunities for the public to forward additional comments or input to the decision

taken;

- (h) develop an evaluation framework to the public participation plan;
- (i) ensure that the public, affected groups, and stakeholders are informed of the results of the public participation process and how their input was used in the decision taken;
- (j) mechanisms for adopting new public participation techniques and technologies;
- (k) for the purpose of creating the culture of, and respect for the principles of public participation, facilitate public education and training programmes in relating to public participation;
- (l) prepare and submit an annual reports to the Governor for submission to the County Assembly on the status of public participation in the affairs of county governance; and
- (m) any other lawful matter.

(3) The guidelines developed under this section shall be laid before the County Assembly for approval.

6. (1) Public participation may be carried out through public consultative meetings which shall be conducted in accordance with the requirements set out in the First Schedule.

Public
consultative
meetings.

(2) Except as provided in the Schedule, an office conducting a public consultative meeting may regulate its own procedure.

(3) A public consultation meeting shall be held in public and any person may attend and participate in the deliberations.

7. (1) Once every year, the County Executive Committee Member, shall organize and facilitate the convening of a citizens' forum to discuss any matter of public importance affecting the public.

Annual County
citizens'
participation
forum.

(2) The County Executive Committee Member shall, when a forum is convened, ensure that the forum is fully publicized to enable the attendance and participation of a wide section of the population, including gender and marginalized groups and communities.

(3) The County Executive Committee Member shall appoint a secretary for every forum to take the minutes of the proceedings of the forum and shall publicize the minutes throughout the county—

- (a) taking note of the issues arising from the forum for action or response by the relevant organ or organs of the county government or other entity; and
- (b) giving feedback on the action taken on the issues raised.

(4) The County Executive Committee Member shall facilitate meaningful participation of the citizens in the forum including—

- (a) ensuring accessibility to the forums; and
- (b) the use of language that is understandable by the citizens including person with disabilities.

(5) No meeting shall be convened for the purpose of promoting, opposing or discussing the election of any person as a member of that County Assembly or as a member of Parliament.

(6) Nothing in this section shall be construed as derogating from the provisions of any other written law relating to the holding of public meetings.

8. The County Executive Committee Member shall ensure that there are measures in place to ensure that minorities and marginalised groups participate decision making in all matters that affect them.

Participation by minorities and marginalized groups.

PART IV—PETITIONS

9. (1) The right for citizens to petition the county government as contemplated under section 88 of the County Governments Act shall be in accordance with this section.

Form of Petition.

(2) A petition to County Executive Committee shall be in the form set out in the Second Schedule and may—

- (a) be handwritten, printed or typed;
- (b) be in English or Kiswahili and be written in respectful, decorous and temperate language;

- (c) be free of alterations and interlineations in its text;
- (d) be addressed to the County Secretary;
- (e) have its subject-matter indicated on every sheet if it consists of more than one sheet;
- (f) confirm that efforts have been made to have the matter addressed by the relevant body and that there has been no response on the matter from the relevant body or that the response has not been satisfactory;
- (g) confirm that the issues in respect of which the petition is made are not pending before any court or other constitutional or legal body;
- (h) conclude with a clear, proper and respectful prayer, reciting the definite object of the petitioner or petitioners in regard to the matter to which it relates;
- (i) contain the names, addresses, identification numbers, signature or a thumb impression of the petitioners;
- (j) in the case of a petition presented by a Member of County Assembly on behalf of a petitioner, be countersigned by the Member presenting it; or
- (k) if the petitioner is unable to sign, be signed by a witness in whose presence the petitioner shall make his or her mark or thumb impression on the petition.

10. (1) A petition to the County Executive Committee shall be submitted to the County Secretary.

Procedure for
presenting
petition.

(2) The County Secretary shall, within seven days of the date of receipt of the petition, review the petition to ascertain whether the petition meets the requirements of this Act.

(3) Where the County Secretary considers that a petition does not comply with section 25, the County Secretary may give such directions as are necessary to ensure that the petition is amended to comply with that section.

11. (1) The County Secretary shall, if satisfied that the petition meets the requirements of this Act, forward the petition to the County Executive Committee or the relevant body for consideration.

Consideration of petition.

(2) The County Executive Committee or the relevant body relating to the petition may appoint a Committee to investigate the subject matter of the petition.

12. (1) The County Executive Committee or other relevant body appointed for that purpose in relation to a petition may hold public hearing and may—

Procedure in the investigation.

- (a) invite individuals to submit memoranda or appear before the Committee to give evidence on a petition;
- (b) invite any public officer to appear before them to give evidence relating a petition; and
- (c) engage qualified persons to assist it in the discharge of their functions;

(2) The evidence given by a person invited under sub section (1) shall be taken down in writing and a copy of it sent to the person who gave the evidence.

(3) The presentations given during a public hearing shall be recorded.

(4) The County Executive Committee or other body may at its discretion refuse to hear any irrelevant evidence or to listen to any unruly or unmanageable person giving evidence.

(5) Any document received at the investigation of a petition shall not be withdrawn or altered without the knowledge and approval of the County Secretary.

(6) A document submitted to the investigation of a petition may be released to the person who submitted it at the conclusion of the deliberations.

(7) The County Secretary shall, within fourteen days of the decision of the County Executive Committee or other body notify the petitioner of the decision.

13. The County Secretary shall, within fourteen days after the decision is communicated to the petitioner—

Publication of decision on petition.

- (a) give notice of the decision to the public by posting a copy in a conspicuous place at the offices of the County Government;
- (b) inform the public that a copy or extract of the decision is available on its website;
- (c) publish the decision in the *Gazette*, print or electronic media; or
- (d) publish the decision in such other manner as may be appropriate for the dissemination of information.

14. (1) The County Secretary shall keep and maintain a register in which shall be recorded all petitions and supporting documents, and the decisions of the County Executive Committee or the relevant body.

Register of petitions.

(2) The register of petitions under subsection (1) shall be accessible to the public during working hours.

15. Any petitioner who is dissatisfied by the decision of the County Government or the relevant body may appeal to the Commission on Administrative Justice.

Appeal against decision on a petition

16. A petition may be presented or submitted to the Assembly by the petitioner or a Member of the Assembly on behalf of the petitioner in accordance with the Standing Orders of the Assembly.

Petitions to Assembly

PART VI—MISCELLANEOUS

17. The County Executive Committee Member shall oversee public consultation under this Act and may, in writing, give directions on matters of policy not inconsistent with the provisions of this Act.

Oversight of the public consultation process.

18. (1) The County Executive Committee shall, at the end of each financial year cause an annual report to be prepared.

Annual report

(2) The County Executive Committee shall submit the annual report to the Governor and the County Assembly not later than three months after the end of the year to which it relates.

(3) The annual report shall contain, in respect of the year to which it relates a description of the activities and outcomes of public participation and any other relevant information.

19. (1) The County Executive Committee Member shall publish and publicize all important information affecting the County within its mandate.

Management of information.

(2) A person may request the County Executive Committee Member for information in public interest.

(3) A request for information under subsection (2)—

(a) shall be addressed to the County Secretary or such other person as the County Executive Committee Member may designate for that purpose;

(b) may, where the County Executive Committee Member incurs expense in providing the information, be subject to payment of a reasonable fee; and

(c) may be subject to confidentiality requirements.

(4) Subject to the provisions of Article 35 of the Constitution and the law relating to freedom of information and data protection, the County Executive Committee Member may decline to give information to an applicant where—

(a) the request is unreasonable in the circumstances; or

(b) the applicant fails to satisfy any confidentiality requirements imposed by the County Executive Committee Member.

20. A person who—

Offences and penalty.

(a) without justification or lawful excuse, obstructs, hinders, or in any way interferes with a public consultative meeting;

(b) knowingly submits false or misleading information to a public meeting;

commits an offence and is liable on conviction to a fine

not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or to both.

21. (1) The County Executive Committee Member may make regulations for the better carrying into effect of the provisions of this Act. Regulations

(2) Without prejudice to subsection (1) the Regulations may prescribe for—

- (a) conduct of public participation including providing for additional guidelines;
- (b) mode of feedback to the public;
- (c) use of media to promote public participation;
- (d) coordination of all forms of citizen fora including sub county, village, neighborhood and other associations;
- (e) representation of citizens in the consultative fora; and
- (f) conduct of the affairs of the Secretariat.

(3) Pursuant to subsection (1), the nature and scope of the Regulations shall—

- (a) be for the purpose and objectives set out under section 3 of this Act;
- (b) be limited only to the matters set out in this Act; and
- (c) comply to the drafting standards set out under any law applicable to the county.

FIRST SCHEDULE (s.6)

CONDUCT OF PUBLIC CONSULTATIVE MEETINGS

All public consultative meetings shall be conducted in accordance with the following requirements:

1. Be based on a realistic timeframe for the consultation, allowing reasonable period for preparation and submission of views.
2. Be clear as to the type of the public, community or profession to be consulted, the issues or matter for consultation and for what specific purpose.

3. Ensure that the consultation document is as simple and concise as possible, providing the summary of the issues or matter for consultation and clearly setting out the questions to be address.
4. Publish and distribute the documents as widely as possible, including but not limited to providing hard copies, television advertisements, websites, community radio announcements and traditional media.
5. Ensure that all responses are carefully and open-mindedly analysed and the results made widely available to the public, including an account of the views expressed and the reasons for the decisions taken.
6. Disclose all information relevant for the public to understand and evaluate the decision.
7. Ensure that stakeholders have fair and equal access to the public participation process and their opportunity to influence decisions.
8. Ensure that all commitments made to the public, including those by the decision-maker, are made in good faith.
9. Undertake and encourage actions that build trust and credibility for the process among all the participants.
10. Collect and collate all data presented during public consultations.
11. Ensure that there is no misrepresentation of work performed or that was performed under the relevant body's direction.
12. Examine all of its relationships or actions, which could be legitimately interpreted as a conflict of interest by clients, officials, the public or peers.
13. Should not engage in conduct involving dishonesty, fraud, deceit, misrepresentation or discrimination.
14. Should not accept fees wholly or partially contingent on the client's desired result where that desired result conflicts with its professional judgment.
15. A question before the meeting shall be decided with a supporting vote of at least two thirds of the members present.

16. The requirement to keep minutes of proceedings of all public consultation meetings and decisions taken.

SECOND SCHEDULE: FORM OF A PUBLIC PETITION

(Section 9)

TO: The Machakos County Government/Assembly

WE/I, the undersigned and humble Petitioner(s)
..... *(Here insert the names or description of the petitioner or petitioners of(address including their status: residents of a particular area, workers, particular part of the community, minority or marginalised group etc.)*

DRAW the attention of the County Government/Assembly to the following:

(Here, briefly state the reasons underlying the petition and request for the intervention of the Government/Assembly by outlining the grievances or problems and summarizing the facts which the petitioners wish the Government/Assembly to consider)

THAT:

(Here confirm that efforts have been made to have the matter addressed by the relevant body, and it failed to give satisfactory response.)

THAT:

(Here confirm that the issues in respect of which the petition is made are not pending before any court of law, or constitutional or legal body.)

THEREFORE your humble petitioners PRAY that the Government / Assembly—

(Here, set out the prayer, by stating in summary what action the petitioners wish the Government/Assembly to take or refrain from)

and your PETITIONERS will ever Pray.

Name of petitioner	Full Address	National ID or Passport No.	Signature/Thumb Print
.....
.....
.....
.....

Subsequent Pages

PETITION concerning.....

(Here, repeat the summary in first page)

***This form may contain such variations as the circumstances of each case may require.**

