

*The Kakamega County Public Participation Bill, 2014*

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**THE KAKAMEGA COUNTY PUBLIC PARTICIPATION BILL, 2014**

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*Clause*

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**A Bill for**

**AN ACT of the County Assembly of Kakamega to give effect to paragraph 14 of Part 2 of the Fourth Schedule of the Constitution, establish modalities and platform for Public Participation and civic education in the governance of the County, and for connected purposes.**

**ENACTED** by the Kakamega County Assembly, as follows—

**PART I PRELIMINARY**

Short title            1. This Act may be cited as the Kakamega County Public Participation and Civic Education Act, 2014.

Interpretation.       2. In this Act, unless the context otherwise requires:

“**Assembly**” means the County Assembly of Kakamega;

“**Constitution**” means the Constitution of Kenya 2010;

No. 17 of 2012.       “**County Secretary**” means a county secretary appointed under section 44 of the County Governments Act, 2012;

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

“**Executive Committee**” means Kakamega county executive committee established in accordance with Article 176 of the Constitution;

“**Government**” means the County Government of Kakamega;

“**County Public Officer**” means any person appointed by the 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;

“**Executive Committee Member**” means the County Executive Committee member for the time being responsible for and or in charge of matters of public service and administration;

**“Member”** means a member of the secretariat and includes a co – opted member.

**“Ministry”** means the department of the county government and headed by the executive committee member for the time being responsible for matters of public service and administration;

**“output indicator”** means an indicator that measures the results of activities, processes and strategies of programmes or projects of the Office;

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

- (a) the residents of the county;
- (b) the rate payers of a particular urban area;
- (c) any resident civic organisation or non-governmental, private sector or labour organization registered in or licensed to operate in the county, or town in the county;
- (d) non-resident persons who because of their temporary presence in the county, make use of services or facilities provided by the county,

Objects and purposes of the Act.

**3.** The objects and purposes of this Act are, subject to Articles 1, 10, 174(c), 201(a) and 232 (1)(d) and (f) of the Constitution, to establish a legislative framework to give effect to —

- (a) paragraph 14 of part 2 of the Fourth Schedule of the Constitution;
- (b) the objects and principles of devolution set out under Article 174 (c) and (d) of the Constitution; and
- (c) Part VIII of the County Governments Act, 2012.

Guiding principles. No. 17 of 2012.

**4.** The guiding principles on public participation shall be as provided for under Article 10, 174(c) and (d) and Article 232 the Constitution of Kenya, 2010 and section 87 of the County Governments Act, 2012.

**5.** (1) Public Participation Shall be carried out by the Executive and the County Assembly respectively.

(2) The County Assembly shall carry out its Public Participation under this Act and as per Article 196 (1) (b) of the Constitution and shall in its budget set out funds for that purpose.

(3) Public Participation and Civic Education by the Executive under this Act shall be under the control and supervision of the Governor in line with the provisions of section 30 (3) (g) of the County Governments Act, 2012.

**PART II — MANDATE, COMPOSITION AND FUNCTIONS OF THE SECRETARIAT OF PUBLIC PARTICIPATION AND CIVIC EDUCATION.**

Coordination of Public Participation and Civic Education

**6.** Public Participation and Civic Education shall be coordinated by the secretariat or a relevant committee in the case of the County Assembly and be carried out by the office of the Governor, or the respective County Executive Committee Members or County Assembly Committees.

Establishment and Composition of the Secretariat

**7.** (1) The County Executive Committee shall establish a secretariat composed of—

- (a) The County Secretary as the secretariat's chairperson
- (b) Head of Communication in the County who shall be the Secretary;
- (c) All the Chief Officers in the County or their designated representatives.
- (d) The Head of Protocol
- (e) The County Attorney
- (f) The Chief of Staff
- (g) Head of ICT

Functions of the Secretariat.

**8.** (1) The secretariat established to oversee Public Participation and civic education shall facilitate and co-ordinate public participation and civic education in the governance of the county

as provided for under paragraph 14 of part 2 of the Fourth Schedule to the Constitution including the participation of communities, organizations and citizens forming the public in the decentralized units within the county.

(2) In the performance of its function and obligations under

subsection (1), the secretariat shall facilitate and oversee the effective coordination of its operations and shall —

Act No. 17 of  
2012.

- (a) establish structures for public participation and for civic education as is required under section 91 of the County Governments Act, 2012;
- (b) ensure that public participation and civic education meetings activities are inclusive;
- (c) provide the public with a clear context for which public participation and civic education is to be undertaken and how decisions will be made;
- (d) inform the public of existing or potential linkages with other policy initiatives, issues or public participation activities;
- (e) ensure that the public participation and civic education device used is appropriate to the nature of the policy initiatives, issues involved, the target groups affected and the staff and resources available;
- (f) establish a feedback process to the public including opportunities for the public to forward additional comments or input to the decision taken;
- (g) develop an evaluation framework to the public participation and civic education plans;
- (h) ensure that public participation and civic education processes adhere to the relevant legislation, regulations, policies or guidelines affecting the rights and responsibilities of the public, officers and the different participants involved;
- (i) establish whether there is support for the development of new public participation techniques and technologies;

- (j) maintain an up to date database or inventory of all its activities;
- (k) for the purpose of creating the culture of, and respect for the principles of public participation, facilitate public education and training programmes relating to public and civic education participation;
- (l) carry out research on matters relating to public participation and civic education generally;
- (m) prepare and submit quarterly reports to the Executive Committee Member for submission to the Governor.
- (n) prepare and submit annual report to the Executive Committee Member for submission to the Governor for onwards transmission to the County Assembly on the status of public participation and civic education in the affairs of county governance; and
- (o) perform any other function as may be assigned by legislation.

(3) In the performance of its function and obligations under this section, the Secretariat shall be guided by the guidelines provided in the First Schedule.

Powers of the Secretariat.

**9.** (1) The secretariat may do or perform all such other things or acts as may be necessary for the proper discharge of its functions under this Act or as may lawfully be done by a public office.

(2) Without prejudice to the generality of subsection (1) the secretariat shall have powers to:

- (a) advice the county executive committee on matters of policy relating to public participation and civic education;
- (b) with the approval of the county executive committee, enter into agreements or arrangements with any institution, association or professional organizations as it may consider appropriate in furtherance of the purpose for which it is established;
- (c) enforce set standards regarding public participation and civic education;



- (d) delegate any of its powers to any officer, representative, agent, section or committee of the secretariat;
- (e) undertake any other activity as shall be necessary for the fulfillment of any of its functions under this Act.

Committees of the secretariat.

10. (1) The secretariat may establish committees for the better discharge of its functions.

(2) A committee established under subsection (1) shall comprise members of the secretariat and such other co-opted or seconded employees, agents and or persons who may not be more than two.

(3) No decision of any committee shall be effective unless it has been adopted and approved by the secretariat.

Disciplinary Action on Members.

11. (1) A disciplinary action may be taken against the chairperson or any member for sufficient grounds including —

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct;
- (c) incompetence or negligence of duty;
- (d) financial misappropriation;
- (e) is found guilty of professional misconduct by the relevant professional body;
- (f) in any particular case, failure to declare his or her interest in any matter being considered or to be considered by the secretariat or committee; or
- (g) absence from three consecutive meetings of the secretariat without a reasonable cause.

(2) Disciplinary action against the chairperson and or a member shall be in accordance with established public service, county code of regulations and the Employment Act, 2008 or any other applicable law or regulation.

- Meetings.
12. (1) The business and affairs of the secretariat shall be conducted in accordance with the Second Schedule.
- (2) In addition to the provisions of the Second Schedule the secretariat may formulate guidelines to regulate its activities.
- (3) The Secretariat may invite any person to attend any of its meetings and to participate in its deliberations, but that person shall not vote on any matter requiring decision of the Secretariat.

- Protection from personal liability.
13. No act, matter or thing done by a member of the Secretariat, if done in good faith while executing the functions, powers or duties of the secretariat, render the member personally liable for any action, claim or demand whatsoever.

**PART III — FUNDING FOR CITIZENS’ PARTICIPATION AND CIVIC EDUCATION**

- Sources of funding
14. (1) Citizen participation and civic education activities shall be financed from the following sources:
- a) disbursement by the County government as provided for under a budget or supplementary budget;
  - b) grants made by the National Government or other County Governments;
  - c) grants, aid or donation from National or International agencies; and
  - d) all monies from any other source provided or donated to the County Government for the said purpose.

- Utilisation of funds
15. (1) The funds under section 14 shall be utilized as follows:
- a) in accordance with sections 91 to 98 of the County Governments Act 2012;
  - b) logistics for organizing regular meetings between citizens and officers of the County Government, in accordance with section 99 of the County Governments Act 2012; and
  - c) Any other function(s) not provided for but related to and/or connected with or in furtherance of public participation and civic education.

**PART IV — CITIZENS’ PARTICIPATION FOR A/FORUM AND CIVIC EDUCATION MEETINGS**

Citizens’  
Participation  
For a/Forum and  
Civic Education

16. (1) The Secretariat shall facilitate the convening of a citizens’ participation forum/fora and Civic Education meeting(s) and shall convene such forum/fora and meetings as is in the circumstances necessary to publicise matters of public importance affecting the public or any community in the county or the delivery of services by the County Government and may also consider petition from other entities with the approval of the executive committee.

(2) The Secretariat may, in collaboration with other entities, when a forum is convened, ensure that the forum/fora and civic education meeting(s) is/are fully publicized to enable the attendance and participation of a wide section of the population.

(3)(a) The Secretariat shall appoint a secretary for every forum/fora and civic education meeting(s) who shall take minutes of the proceedings of that forum/fora and civic education meeting(s), taking note of the issues arising in the forum for action or response by the relevant organ or organs of the county government or other entity and thereafter provide feedback on the action taken on the issues raised.

(b) the secretariat shall publicize the said minutes to the public.

(4) The Secretariat shall facilitate meaningful participation of the citizens in the forum/fora and civic education meeting(s) including—

- (a) ensuring accessibility to the forum; and
- (b) use of a language that is understandable.

(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.

Facilitation of

17.(1) The Secretariat shall facilitate the convening of citizens’

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citizens'  
participation  
forum/fora and  
Civic Education

participation forum/fora and civic education meeting(s) as may be necessary to publicise matters of the county, sub-county, ward or village to discuss and give views on -

- (a) issues of interests in the county, sub-county, ward, village or urban area;
- (b) the implementation of county policies and plans in the county, sub-county, ward, village or urban area; or
- (c) the administration and functioning of the county, sub-county, ward, village or urban area; or
- (d) the delivery of services by the county public service in the county, sub-county, ward, village or urban area.

(2) The provisions of subsections (2) to (6) of section 22 shall apply to a forum convened under this section.

Convening of  
citizen's  
participation  
forum/fora and  
civic education

18. (1) A Sub-County, Ward or Village Administrator or a member/committee of the County Assembly may with prior approval of the secretariat or the relevant committee of the Assembly in the case of member/committee, convene a citizen participation forum or civic education meeting(s) for the citizens to discuss and give views on or with respect to the following—

- (a) issues of interests in the respective administrative unit ;
- (b) implementation of government policies and plans in the respective administrative unit ;
- (c) the administration and functioning of the respective administrative unit ; or
- (d) the delivery of services by the county public service in the respective administrative unit.

(2) The forum/fora and civic education meeting(s) shall be open to all citizens of the respective administrative unit who desire to attend and citizens shall be allowed to speak through representatives or directly.

(3) The convener of the forum/fora and civic education meeting(s)

shall appoint a secretary to take the minutes of the proceedings of the forum/fora and civic education meeting(s) and shall, with the assistance of the Secretariat publicize the minutes to the members of the respective administrative unit and shall also;

(a) take note of the issues arising from the forum for action or response by the relevant organs of the county government; and

(b) give a feedback on the action taken on the issues raised.

(4) The convener of the forum/fora and civic education meeting(s) must ensure that the forum/fora and civic education meeting(s) is/are fully publicized to enable attendance and participation of a wide section of the population, including marginalized groups and communities.

#### **PART V- PETITIONS**

Form of petition.

19. A petition to County Executive Committee on any issue of public interest in the county shall be in the form set out in the Third Schedule and shall:

(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;

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- (h) conclude with a clear, proper, concise and respectful prayer, reciting the definite object of the petitioner or petitioners in regard to the matter to which it relates;
- (i) subject to paragraph (j), contain the names, addresses, identification numbers, signature or a thumb impression of the petitioner or of every petitioner, where there is more than one petitioner;
- (j) contain only signatures or thumb impressions, as the case may be, and addresses and identification numbers written directly onto the petition and not pasted thereon or otherwise transferred to it;
- (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.

Procedure for presenting petition.

20. (1) A petition to the County Executive Committee shall be submitted to the county secretary by the petitioner.

(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 19, the county secretary may give such directions as are necessary to ensure that the petition is amended to comply with that section.

Consideration of petition.

21. (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 county department for consideration.

(2) The county executive committee or the relevant county department relating to the petition may appoint a committee to investigate the subject matter of the petition.

Procedure in the investigation

22. (1) The county executive committee, the relevant county department or a committee appointed in relation to a petition may hold public hearing and may –

- (a) invite individuals to submit memoranda or appear before the committee to give evidence on a petition;
- (b) invite any person holding public office to appear before them to give evidence relating a petition;
- (c) co-opt qualified persons to assist it in the discharge of their functions;
- (d) with the support from the Secretariat, hold public hearing in relation to the petition.

(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) A person giving evidence may, within seven (7) days from the date of receipt of the copy under sub section (2), suggest corrections to his or her evidence due to inaccurate reporting and the evidence shall be printed with such corrections as may be appropriate.

(4) The county executive committee, the relevant body or the committee 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 executive committee.

(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 committee appointed under section 21 (2) shall, as soon as practicable after the conclusion of the investigation, submit its findings and recommendation to the county executive committee or the relevant body for a final decision to be made on the petition.

(8) The county secretary shall, within fifteen days of the decision

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of the County executive or the relevant body, and in writing, notify the petitioner of the decision.

Publisization of  
decision on  
petition

23. The County Secretary shall, within fourteen (14) days after the decision is communicated to the petitioner or petitioners, with assistance from the secretariat —

- (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 such other manner as may be appropriate for the dissemination of information.

Register of  
petitions.

24. (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.

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

Appeal against  
decision on a  
petition

25. Any party dissatisfied by the decision of the county government or the relevant body may appeal to the Commission on Administrative Justice pursuant to the provisions of the Commission on Administrative Justice Act, 2011.

Petitions to  
Assembly

26. 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.

## **PART VI— MISCELLANEOUS**

Executive  
Committee's  
power of  
direction.

27. The County Executive Committee shall oversee the performance of the activities of the Secretariat under this Act and may, in writing, give the Secretariat directions on matters of



policy not inconsistent with the provisions of this Act.

Offences and  
penalty.

28. A person who:

- (a) without justification or lawful excuse, obstructs hinders, threatens a member of the Secretariat or a member of staff or committee acting under this Act;
- (b) submits false or misleading information;
- (c) without reasonable excuse, fails to appear before a meeting of the Secretariat when required to do so;
- (d) knowingly and deliberately misrepresents to or misleads a member of the Secretariat or a member of staff at the Secretariat acting under this Act, commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year or to both.

Redress against  
act of Secretariat.

29. Any person who is aggrieved by an act of the Secretariat under this Act may apply to the Executive Committee for redress.

Regulations.

30. The Executive Committee Member may, in consultation with the Secretariat, and upon approval by the county assembly make regulations for the better carrying out of the purposes and of this Act including but not limited to the determination of the levels, modes, media and or mechanisms for public participation as well as facilitation of the same.

**PUBLIC PARTICIPATION GUIDELINES**

The following shall guide the county government and the secretariat when conducting public participation activities:

1. Build a realistic timeframe for the consultation, allowing reasonable period for each stage of the process.
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 addressed.
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. Be personally responsible for the validity of all data collected, analyses performed, or plans developed by it or under its direction.
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.

**SECOND SCHEDULE (s.12 (1))**

**MEETINGS AND PROCEDURE FOR THE SECRETARIAT**

1. The secretariat shall decide when, where and the frequency for its meetings provided that no three months shall lapse before the secretariat convenes.
2. The quorum of any meeting of the secretariat shall be a simple majority of all the members and a decision or resolution of the meeting shall be by a simple majority of the members present.
3. A meeting of the secretariat shall be presided over by the chairperson, the vice - chairperson or in their absence, by any member chosen by members present at the meeting.
4. The members of the secretariat shall elect a vice-chairperson from among themselves-
  - (a) at the first sitting of the office; and
  - (b) whenever it is necessary to fill the vacancy in the office of the vice-chairperson.
5. The chairperson and vice-chairperson shall not be of the same gender.
6. If any member has a personal or fiduciary interest in any matter before the secretariat, and is present at its meeting or of any of its committee at which any matter is the subject of consideration, that member shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter failing which he commits an offence for which such person is liable for punishment in accordance with the provisions of the Public Officers Ethics Act and or the Penal Code or such other law repealing the same.
7. A disclosure of interest made under paragraph (6) shall be recorded in the minutes of the meeting at which it is made.
8. No member or staff of the secretariat shall transact any business or trade with the secretariat
9. The secretariat shall keep minutes of all proceedings of its meetings and decisions taken.

**THIRD SCHEDULE (s. 17)**

**FORM OF A PUBLIC PETITION**

TO: The (Name of county) County Executive Committee

**WE/I, the undersigned and humble Petitioner(s)** of..... (Here insert the names or description of the petitioner or petitioners and 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 Executive Committee 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 County Executive Committee:-**  
(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 Passport No.	or Signature/Thumb print
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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.**

**MEMORANDUM**

Public Participation is a key component of our present constitutional dispensation.

This is captured in articles 1, 10(1) a, 196, 35(1), 201 and 232(d) and schedule 4 paragraph 14 of the Constitution of Kenya 2010.

The County Governments Act of 2012 has dedicated part VIII on the same issue of public participation and civic education.

Public participation may be direct or indirect, to enhance public participation by the citizen civic education to the public is necessary.

This bill seeks to give effect to the provisions of the Constitution of Kenya 2010 and the County Governments Act No. 17 of 2012. The Bill establishes a secretariat to coordinate public participation and civic education.

The purpose of the secretariat is quasi-independent body with full mandate to coordinate activities related to public participation and civic education.

Public participation and civic education programmes would require funding and the sources of possible funding have also been identified in the Bill.

The main purpose of the bill is to ensure that public participation and civic education programmes are carried out in an organized and credible manner.

Therefore as stated herein above, this bill shall occasion additional expenditure of public funds which shall be provided for in the County Budget estimates to finance the activities of the secretariat.

