

The Nakuru County Public Participation Bill | 2014

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THE NAKURU COUNTY PUBLIC PARTICIPATION BILL, 2014

A Bill for

AN ACT of Nakuru County Assembly to give effect to Article 1, 10 (2) (a), 174 (c) (d), 196, 232 (1) (d) and Paragraph 14 of Part 2 of the Fourth Schedule of the Constitution and Part VIII of the County Governments Act; to encourage participation on matters of public interest and to establish modalities and platforms for public participation in the governance of the county; and to provide for matters connected therewith and incidental thereto.

BE IT ENACTED by the Nakuru County Assembly of as follows—

PART I :- PRELIMINARY PROVISIONS

Citation

- 1.** This Act may be cited as the Nakuru County Public Participation Act, 2014 and shall come into operation on such date as the Governor may, by notice in the Kenya Gazette, proclaim.

Interpretation.

- 2.** (1) In this Act, except where the context otherwise requires:

“administrator” means sub-county administrator, ward administrator, village administrator

“Constitution” means the Constitution of Kenya, 2010;

“executive committee” means Nakuru County Executive Committee established in accordance with Article 176 of the Constitution;

executive committee member” means the Nakuru County Executive Member for the time being in charge of Public Affairs or information;

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

“**government**” means Nakuru County Government;

“**public participation**” means the process of educating, informing and engaging the public or a representative sector of the public in an open, democratic and accountable forum in formulation of policies, developing laws and making decisions that affect the public;

“**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 city or municipality;
- (c) any resident civic organisation or non-governmental, private sector or labour organization with an interest in the governance of the county, city or municipality;
- (d) non-resident persons who because of their temporary presence in a the county, city or municipality make use of services or facilities provided by the county, city or municipality.

- Objectives of the Act **3.** (1) The purpose of this Act is to give effect to Article 1, 10 (2) (a), 174 (c) (d), 196, 232 (1) (d) and Paragraph 14 of Part 2 of the Fourth Schedule of the Constitution and Part VIII of the County Governments Act and in particular:-
- (a) to encourage the public to participate in the affairs of the government and to identify themselves with its institutions;
 - (b) to enhance civic dignity by enabling the voices of the public to be heard and taken account of;
 - (c) to strengthen legitimacy of the legislation, policies and decisions by promoting a spirit of democracy, accountability, transparency and co-operation between the public and the institutions of the government;

- (d) to provide for modalities, mechanisms, processes, platforms and procedures for public participation
- (e) to encourage the public to participate in the affairs of the government and to identify themselves with its institutions;
- (f) to enhance civic dignity by enabling the voices of the public to be heard and taken account of;
- (g) to strengthen legitimacy of legislation, policies and decisions by promoting a spirit of democracy, accountability, transparency and co-operation between the public and the institutions of government

Guiding Principles.

4. Subject to section 87 of the County Governments Act and other statutory provisions, public participation in the county government activities will be guided by the following principles:
 - a) timely access to information, data, documents, and other information relevant or related to policy formulation and implementation;
 - b) reasonable access to the process of formulating and implementing policies, laws, and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards;
 - c) protection and promotion of the interest and rights of minorities, marginalized groups and communities and their access to relevant information;
 - d) promotion of public-private partnerships, such as joint committees, technical teams, and citizen commissions, to encourage direct dialogue and concerted action on sustainable development;
 - e) recognition and promotion of the reciprocal roles of non-state actors' participation and governmental facilitation and oversight;
 - f) inclusion of the widest spectrum of the public;
 - g) provision of information in formats accessible to a wide group of

people including persons with disabilities and translate to local language where necessary;

- h) continuous civic education to sensitize the public on the importance of their involvement in public affairs;
- i) communication to participants on how their input affected the decision;
- j) adherence to the national values and principles of governance set out under Article 10 of the Constitution;
- k) adherence to the values and principles of public service set out by Article 232 of the Constitution;
- l) adherence to the principles of leadership and integrity set out in Chapter Six of the Constitution;
- m) recognition and respect of the differences between cultures and contributing to the recognition and value of each; and
- n) duty to act in good faith by abstaining from impartiality and anti-democratic conduct.

PART II – PUBLIC PARTICIPATION

Development of
culture of public
participation

- 5.** The county government shall develop a system of governance that encourages participation by citizens in its affairs, and shall for that purpose:
- (a) create appropriate conditions for public participation in:
 - i. the formulation and implementation of laws, policies and regulations;
 - ii. the preparation, implementation and review of the integrated development plans;
 - iii. the establishment, implementation and review of its performance and management system;
 - iv. the monitoring and review of the outcomes and impact of its performance;

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v. the preparation of its budget; and

vi. the making of strategic decisions relating to delivery of service.

(b) contribute to building the capacity of:

(i) the citizens to enable them participate in the affairs of the county; and

(ii) sub-county administrators, ward administrators and village administrators and members of the staff to foster community participation.

(c) apply its resources, and allocate funds annually as may be appropriate for the implementation of paragraphs (a) and (b).

Mechanisms,
processes and
procedures for public
participation

- 6.** (1) Participation by the public in the affairs of the county shall take place through:
- a) decentralized structures for participation in terms of the sub-counties equivalent to the constituencies within the county established under Article 89 of the Constitution, the Wards within the county established under Article 89 of the Constitution and section 26, village units in each county as may be determined by the county assembly of the respective county, the urban areas and cities within the county established in accordance with the Urban Areas and Cities Act (No. 13 of 2011), and such other or further units as a county government may determine;
 - b) sub-county administrators in accordance with Section 50 (3)(g) of the County Governments Act;
 - c) ward administrators in accordance with Section 51 (3)(g) of the County Governments Act;
 - d) village administrators in accordance with Section 52 (3)(a)(i) of the County Governments Act; and
 - e) other appropriate mechanisms, processes and procedures established

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by the county government; and

(2) The county assembly shall establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the county assembly, and shall for this purpose provide for:

- (a) the receipt, processing and consideration of petitions, complaints and suggestions lodged by members of the public;
- (b) notification and public comment procedures when a Bill is introduced in the County Assembly;
- (c) public meetings and hearings by the appropriate decentralized unit and other political structures and political office bearers of the county, when appropriate;
- (d) consultative sessions with recognized community organizations and, where appropriate, traditional authorities;
- (e) report-back to the community;
- (f) information communication technology based platforms; and
- (g) county calendar of events.

(3) The county assembly shall ensure that the mechanisms, processes and procedures for citizen participation provide for participation by the widest sections of the public, and these may include:

- (a) citizen forums;
- (b) focus group discussions;
- (c) open days/ exhibitions;
- (d) citizen care desks and information centers;
- (e) notice boards or suggestion boxes;
- (f) websites or social networking facilities;
- (g) county magazines, monthly newsletters or information bulletins;
- (h) local traditional media; and
- (i) any other mechanism, process or procedure of citizen participation

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that may be suitable for the county.

- (4) When establishing mechanisms, processes and procedures in terms of subsection (2) the county assembly must take into account the special needs of:
- (a) people who cannot read or write;
 - (b) people with disabilities;
 - (c) marginalized groups and minorities.

Communication of information concerning public participation

- 7.** (1) An administrator shall communicate to his community information concerning:
- (a) the available mechanisms, processes and procedures to encourage and facilitate public participation;
 - (b) the matters with regard to which public participation is encouraged;
 - (c) the rights and duties of members of the local community with regards to public participation; and
 - (d) county governance, management and development.

(2) When communicating the information mentioned in subsection (1), an administrator shall take into account:

- (a) language preferences and usage in the community;
- (b) the special needs of people who cannot read or write; and
- (c) people with disabilities.

PART III: PUBLIC COMMUNICATION

Communications to local community

- 8.** (1) When an administrator has to communicate through the media to the local community in terms of this Act or any other applicable legislation, he shall communicate through:

- (a) national or local newspaper;

- (b) national or local T.V. station; and
- (c) national or local radio station.
- (d) Notice boards

(2) Any such notification shall be in the official languages but shall have regard to language preferences and usage of the area.

(3) When the administrator invites the local community to submit written comments or representations on any matter before the county assembly, it must be stated in the invitation that any person who cannot write may come during office hours to a place where a staff member of the county assembly named in the invitation will assist that person to transcribe that person's comments or representations or at local administration offices

(4) (a) When an administrator requires a form to be completed by a member of the local community, a staff member of the county assembly must give reasonable assistance to persons who cannot read or write, to enable such persons to understand and complete the form.

(b) If the form relates to the payment of money to the county assembly or to the provision of any service, the assistance must include an explanation of its terms and conditions.

9.

Notices

(1) A public participation notice shall be published at least twenty one (21) days before the meeting in the County Gazette or the media in terms of this Act or shall be displayed at the sub-county, ward or village offices, provided that notice of a shorter period may be given in an emergency situation that calls for public participation or consultation. The notice shall indicate the time, date and venue of the meeting. The notice shall be in the official languages but shall have regard to language preferences and usage of the area.

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Documents to be
made public

10. (1) the county government shall establish official websites for the executive and county assembly

(2) The websites shall be used to communicate relevant information to the public on any matters that affect the public. The relevant executive committee member and the clerk to the assembly shall ensure that the respective websites are properly maintained, managed and regularly updated.

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PART IV: PUBLIC PARTICIPATION FORUMS

Public Participation
Forums

- 11.** (1) (a) The county executive committee member or Clerk shall in consultation with the administrators shall call for, co-ordinate, facilitate and monitor public participation forums to discuss matters of public interest in the sub-county, ward and village levels including business and organizations
- (b) An administrator or member of the county assembly may also request for a public participation forum in his locality.

Co-ordination and
monitoring of public
participation
activities

- 12.** The public participation forums may involve the larger public or a sector of the public affected by the policy, law or decision of the county government

13.(1) The Clerk shall in consultation with county executive committee member facilitate and oversee the effective coordination of public participation and shall :-

- (a) ensure to inform the public on whether financial resources correspond to the nature and scope of the public participation planned;
- (b) ensure that there is sufficient and adequately trained staff to carry out planned public participation;
- (c) ensure that the sub-counties, wards and villages have clear and reasonable timelines for public input and comment and that these timelines are communicated to the participants;
- (d) ensure that the sub-counties, wards and villages have established a feedback process to the public including opportunities for the public to forward additional comments or input to the decision taken;
- (e) develop an evaluation framework to the public participation plan;

- (f) advise the county executive committee on matters of policy relating to public participation;
- (g) 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;
- (h) prepare and submit reports to the County Assembly on the status of public participation implementation under this Act;
- (i) perform any other function as may be assigned by legislation.

PART V- PETITIONS

Petitions

- 14.**
- (1) Every member of the public has a right to petition to the county executive or county assembly over a policy, law or decision that affects him.
 - (2) Petitions to the county assembly shall be governed by the Petitions to the County Assembly (Procedure) Act, 2014 and shall be in the form prescribed in the Second Schedule with appropriate modifications.
 - (3) Petitions to the county executive shall be addressed to the relevant executive committee member and shall be in the form prescribed in the Second Schedule with appropriate modifications.

PART VI – PUBLIC PARTICIPATION AND AFFIRMATIVE ACTION

Affirmative action

- 15.** The county government shall put in place affirmative action programmes to ensure that people with disabilities, minorities and marginalized groups—
- (a) participate in all matters that affect them and are represented in governance and other spheres of life; and
 - (b) are provided with special opportunities in all areas of economic, educational, social, religious and political fields.

PART VII— MISCELLANEOUS

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Offences and penalties

- 16.** (1) Any person who attempts to influence the county executive committee member, administrator or the Clerk or any other officer of the county government not to enforce an obligation in terms of this Act, is guilty of an offence and on conviction liable to a fine not exceeding fifty thousand shillings or to imprisonment for a period not exceeding one year or to both.
- (2) An executive committee member, administrator or the Clerk or any other officer of the county government who accedes to an attempt mentioned in subsection (1), is guilty of an offence and on conviction liable to a fine not exceeding one hundred and fifty thousand shillings or to imprisonment for a period not exceeding two years or to both.

Regulations.

- 17.** (1) The executive committee member responsible for matters relating to information may, in consultation with the administrators and the County Development Officer, make regulations for the better carrying into effect of the provisions of this Act.
- (2) The executive committee member may make regulations or issue guidelines concerning:
- (a) minimum standards for county, including minimum standards relating to funding, when implementing the provisions of this Act; and
 - (b) any matter that may facilitate:-
 - (i) the participation of the public in the affairs of the county; or
 - (ii) the application and implementation of this Act.

When making regulations or issuing guidelines to provide for or to regulate the matters of this Act, the executive committee member must take into account the capacity of the county and decentralized units therein to comply with those matters.

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FIRST SCHEDULE

PUBLIC PARTICIPATION GUIDELINES

The following guidelines shall guide the administrators while 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 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 analyzed 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.

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SECOND SCHEDULE -

FORM OF PETITION

I/We, the undersigned,

(Here, identify in general terms, who the petitioner or petitioners are, for example, citizens of Kenya, residents of province or region, workers of industry, etc.)

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

(Here, briefly state the reasons underlying the request for the intervention of the County Assembly by outlining the grievances or problems by summarizing the facts which the petitioner or petitioners wish the County 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.)

HEREFORE your humble petitioner(s) Pray that the County Assembly/Executive—

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

And your PETITIONER(S) will ever Pray.

Name of petitioner impression	Full Address	National ID. or Passport No.	Signature/Thumb
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PETITION concerning.....
(Here, repeat the summary in first page)

Name of petitioner
Signature/

Thumb impression

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(Subsequent Pages)

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

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MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to provide a legislative framework through residents of Nakuru County can effectively participate in governance and legislative processes within the County.

The Bill is divided into eight (7) parts. The first part provides for citation and commencement of the Bill; interpretation of some the key words and phrases used in the Bill; objects and purposes of the Bill; in addition to the principles guiding application of the Bill.

The second part provides for public participation and how the County Government shall develop a system of governance that encourages participation by citizens. Clause six (6) provides for mechanisms, processes and procedures for public participation while clause seven (7) provides for communication of information concerning public participation.

Part 3 includes provisions on public communication and access to information while Part 4 and 5 cover the provisions on public participation.

Part six (6) under clause sixteen (16) requires that the Clerk ensures that the county government and its entities put in place affirmative action programmes to ensure that marginalized groups' are involved in public participation. Part seven (7) of the Bill carries the miscellaneous provisions like offences and regulations.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the _____, 2016.

County executive committee member