

SPECIAL ISSUE

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REPUBLIC OF KENYA

BARINGO COUNTY GAZETTE SUPPLEMENT

BILLS, 2014

NAIROBI, 17th June, 2014

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

A Bill for

AN ACT of the Baringo County Assembly to provide a mechanism for the involvement of and participation in decision making and governance processes by the public in Baringo County, give effect to the provisions of Articles 1, 10, 174, and 232 of the Constitution and Section 87 of the County Government Act and for matters related and connected thereto

ENACTED by Baringo County Assembly and assented by the Governor of Baringo County as follows—

PART I—PRELIMINARY

1 This Act may be cited as the Baringo County Public Participation Act, 2014 Short title

2 In this Act, unless the context imports a contrary meaning— Interpretation

“Baringo County Public Service Board” means the service board established under section 57 of the County Government Act

“Committee” means the Publicity and Participation Committee established under section 6

“Constitution” means the Constitution of Kenya, 2010

“County” means Baringo County established under the Constitution

“County Assembly” means the Baringo County Assembly as established under Article 176 of the Constitution

“County Assembly Service Board” means the service board established in accordance with Section 12 of the County Government Act, 2012 for Baringo County Assembly

“County Executive Committee” for the County has the meaning assigned to it in section 2 of the County Government Act and Article 176 of the Constitution

“County Public Service Board” means the public service board established for the County in accordance with

section 57 of the County Government Act, 2012 for the county

“County official includes the Governor, Deputy Governor, the Senator representing the County, the Woman Member of the National Assembly representing the County, a Member of the County Executive Committee, a member of a County Service Board, member of the County Assembly or a County public officer

‘County public officer means an officer in the service of the County and includes a person contracted by or on behalf of the County on a special assignment but does not include an independent contractor or agent

“County Service Board” means the Baringo County Assembly Service Board established in accordance with Article 176 of the Constitution

‘Director’ means the director appointed in accordance with Section 5 of this Act

‘Governor’ means the Governor of the County duly elected under

Persons with disabilities’ has the meaning given to it in the Persons with Disabilities Act

Public’ means the people residing in the County and include citizens and non citizens, children and young persons, the aged, persons with disabilities, women and minorities

3 The objects and purposes of this Act are to give effect to Articles 1(4) 10, 174, 201 and 232 of the Constitution and Sections and of the County Government Act, 2012, on the right of the public to be involved in and participate in decision-making in matters affecting them

Objectives and purposes

4 Subject to section 87 of the County Government Act, public involvement and participation in decision making processes in the County shall be guided and governed by the principles that

Guiding Principles

- (a) Sovereign authority in Kenya belongs to the people and may be exercised directly or through elected leaders in accordance with the Constitution,

- (b) The people may delegate this power and authority to any organ of State either at the national or county level
- (c) The guiding principles and national values set out in Articles 10, 174, 232 and chapter six of the Constitution shall be adhered to in making any decision affecting or in which the public has an interest
- (d) The public in the county shall have a right to be consulted on and involved in the process leading to any decision that may directly or indirectly affect them
- (e) The public shall be consulted on, and participate in determining the design of their involvement and participation in decision making process
- (f) The principles set out in section 87 of the County Government Act for citizen participation in decision making at the county level shall be adhered to
- (g) Any person in the county shall be entitled and have access to information from a county organ, institution, elected official or public officer that may be required for effective and meaningful participation in decision making
- (h) When a decision has been made affecting or touching on their interests the public have a right to know the decision, how it affects them and the manner in which their input affected its being arrived at

ART II – FORUMS FOR PUBLIC PARTICIPATION

5 (1) There shall be in the County Executive a department for publicity and public participation, headed by a Director

Establishment and functions of the Department of Publicity and Public Participation

(2) The department established under sub section (1) shall be responsible for the facilitations and coordination of publicity and public participation in decision making in the county

6 (1) For the purposes of involving and facilitating public participation in governance in the County, there shall be a Publicity and Public Participation Committee for

Composition of the Committee of Publicity and Public Participation

the County that shall be headed by the Director of the department established under section 5

Participation

Be coordinated by sub County Admin & sub County Admin from the Director

✓ (2) The Committee established under sub section (1) shall be appointed by the Executive Committee Member and shall comprise and be composed of

Ward Representative

- (a) Two members one of either gender from every sub-county in the county
- (b) Two Members one of either gender appointed by the Governor from the County Executive Committee,
- (c) Two Members one from either gender appointed by the County Assembly
- (d) Two persons to represent professional organizations in the County,
- (e) Two persons to represent the private sector and industry within the county,
- (f) One person to represent the County Public Service Board,
- (g) One person to represent urban or town administrations in the County, and
- (h) One person to represent the informal sector in the county

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✓ 7 (1) The functions of the Committee shall be

Functions of the Committee

- (a) in accordance with the Constitution and this Act , facilitate and co ordinate public involvement and participation in governance in the county,
- (b) to carry out civic education among the county organs, institutions, officials, public officers and the general public on all or any matter relating to the Constitution and this Act,
- (c) to create awareness and sensitize the public on the national principles and values ,
- (d) to advise the County governance organs , institutions and officers on matters relating to public participation,
- (e) to facilitate public education and training programmes on public participation

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- (f) to ensure that the County governance organs, institutions and officers adhere to and comply with the national principles and values and the requirements of section 87 of the County Government Act,
- (g) to inform the public of intended, formulated and or enacted policies and laws both at national and county levels
- (h) to plan and provide a clear structure and context through which public participation may be undertaken and public inputs given within reasonable timelines before decisions are made,
- (i) to provide logistical support and strategies, including the development of consultation plans and information, to the County governance organs institutions and officers to facilitate public participation in any matter before any of them,
- (j) to establish a feedback process to the public to afford opportunity to the public to make additional comments or input to the decisions made,
- (k) to inform the public on the availability of adequate and sufficient resources to finance development activities and human resources to deliver services effectively
- (l) to develop a monitoring and evaluation framework for public participation plan and carry out research on matters relating to public participation
- (m) to prepare and submit to the Governor and County Assembly reports on the status of the implementation of its functions and obligations under this Act ,and
- (n) to perform any other function as may be assigned to it by the county governance organs, institutions, officers or under any legislation

~~Public~~ South
 => To include Maenzi oleo ya Kianawaki representatives

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(2) In the performance of its functions and obligations under this section, the committee will be guided by the guidelines in the first schedule to this Act

1/8 (1) The Director of the department shall be appointed by the ~~Governor with approval of the County Assembly~~ and shall hold office for a term of three years renewable once

(Appointment of the Director)

specify the relevant sec to make the appointment

shall be employed by the county's public service board through competitive interview and other criteria, which post shall be permanent & pensionable

(2) Save as is provided to the contrary in this Act, members of the Committee established under section 6 shall hold office for a term of two years and shall be eligible for re-appointment

} Delete

(3) The County governance organ or institution or any other entity appointing a representative to the Committee may revoke such appointment and replace the person appointed with another

} Delete

9 The remuneration and other emoluments allowances, costs and other expenses of the director and Members of the Committee shall be determined and provided by the County Assembly and shall be chargeable out of the County Revenue Fund

} Delete

10 (1) The Committee may enter into any agreement or arrangement with any person that it may consider appropriate in carrying out its functions under this Act and may establish Committees for this purpose

} Agreements by the Committee Assembly

(2) A Committee established under sub section (1) may comprise members of the Committee and not more than three opted members

PART III—PUBLIC PARTICIPATION STRUCTURES AND FORUMS

11 (1) Public participation in governance and decision making process in the County shall be convened to take place at County , sub-County ,Ward, Village and such other forum as the governance organs, institutions or officers may desire

Venues for public participation

(2) Every County governance organ institution official and officer required under the law to do so, shall at least once every three months convene or cause to be convened and hold public participation forums at county, sub county, ward and village levels as provided under this Act

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(3) The public county participation forums referred to in sub section (2) shall be for the purposes of—

- (a) Creating awareness and informing the public in the county and the decentral ed units of the county of the policy and legislative initiatives intended to be commenced or commenced on

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which public views, comments and inputs may be required

- (b) Informing the public in the county and the decentralized units of the policy and legislative measures undertaken and how they impact on the public and seek public views, comments and inputs thereon
- (c) Creating awareness and informing the public of social economic and political plans and programs intended for the county and seek public input and opinions thereon and
- (d) Publicizing and creating awareness of social economic development, plans, projects and programs completed in the county sub county ward or village and receive public assessment thereon including comments on service delivery

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COUNTY PUBLIC PARTICIPATION FORUMS

12 (1) At the request of a County governance organ, institution or officer, the Committee shall facilitate the convening in the County of a public participation forum, and shall convene a public participation forum once every three months, to discuss any matter of public importance or interest affecting the public or any section thereof or the delivery of services by a County governance organ, institution or officer

Governance organ to request for convening of County Forums

(2) A county public participation forum shall be convened for and held by-

- (a) The Governor or the County Executive Committee or a Member thereof whenever the Governor or County Executive Committee plans or intends to develop a policy or have a Bill introduced in the County Assembly on which public views and input are necessary
- (b) The county Assembly or its Committee whenever there is on the floor of the Assembly a Bill for enactment or any other parliamentary business in which the views, opinion and input of the public is necessary
- (c) The Senator or Women Member of the National Assembly representing the County, whenever



there is a Bill proposed or there is other business on the floor of the House touching on and affecting the public or any section thereof in the County

- (d) A Member of the National Assembly representing a constituency in the County, whenever there is a Bill proposed or there is other business on the floor of the House touching on and affecting the public or any section thereof in the County

13 (1) Once it has convened a County public participation forum the Committee shall ensure that the forum is fully publicised, including the venue, date, time and subject of the forum, to enable attendance by and participation of all persons who may wish to be involved and participate in the forum

Procedure after forum is convened

(2) The Committee shall facilitate effective and meaningful public participation at such forum by ensuring accessibility to the forum and use of the national or official or such other common language in use within the county and shall include language understandable by persons with disabilities

(3) No forum may be convened by the Committee for the purpose of promoting, opposing or discussing the election of any person or persons as a member or members of that County Assembly or national parliament

14 (1) Despite that the County organ, institution or officer requesting that the forum be convened may have their own procedure for conduct of business, the Committee shall appoint its own secretary for every forum who shall take minutes of such forum for and on behalf of the Committee during the proceedings of a county public participation forum

Committee to appoint Secretary for the forum

(2) The Committee shall cause the minutes of the forum and any decision emanating therefrom to be publicized in such a manner and form as to enable the public to be aware thereof

SUB COUNTY PUBLIC PARTICIPATION FORUM

15 (1) On the request of a sub-county or town administrator, city or municipal manager or a member of

Convening a Sub County forum

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the National Assembly representing a constituency in the Sub county, the committee shall facilitate the convening and holding of a sub county public participation forum that may discuss, among other matters-

- (a) Issues of interest and or concern in the subcounty, city, municipality, town or urban area,
- (b) The financing and implementation of county policies, projects and programmes and the general development plans in the sub county city, municipality, town or urban area,
- (c) The administration and functioning of and service delivery in the sub county, city, municipality, town and urban area

(2) A sub-county public participation forum shall be convened for and held by a Member of the National Assembly representing a constituency in the sub county whenever there is a Bill proposed or there is other business on the floor of the House touching on or affecting the public or any section thereof in the sub-county

(3) The provisions of sections 13 and 14 shall apply *mutatis mutandis* to a forum convened under this section with necessary modifications

16. (1) A ward or village administrator or a Member of the County Assembly representing the ward may convene a ward or village public participation forum to discuss, give opinion and or comments on matters respecting but not limited to-

Convening of a ward or village forum

- (a) The implementation of the County policies, projects, plans and programmes for the economic and social development of the ward or village,
- (b) The administration, functioning of and service delivery in the ward or village, and
- (c) Any other issues of interest in the ward or village

(2) Notwithstanding sub-section (1), a Member of the County Assembly representing a ward shall convene a ward or village public participation forum whenever there is a Bill proposed or there is other business on the floor of the Assembly touching on or affecting the public or any section thereof in the ward or village.

(3) A member of the County Assembly representing a ward, a ward and village administrator shall each convene a ward or village public participation forum at least once every three months to inform and seek public views on development, policy and legislative issues in the county affecting or touching on the interest of the people of the ward or village

17 (1) A forum convened and held under section 16 shall be open to all persons in the ward or village desiring to attend and who shall be facilitated to speak and make their contributions at such forum either directly or through duly appointed representatives

Forums to be open to members of public

(2) The convenor of a forum under section 16 shall ensure that the forum as given full publicity to enable attendance and participation by a wide section of the population in the world including marginalised and minority groups

(3) The convenor shall appoint the secretary to keep a record of the proceedings and the decisions made during the forum which shall be with the assistance of the committee be publicised throughout the ward or village to enable feedback on the decisions made and further input or comments thereon

18 (1) The County organs, institutions, officials and the committee shall ensure that affirmative action programmes are put in place to ensure that minority and marginalised groups are represented and participate in all governance matters in the County

Affirmative action programs to involve minorities and marginalised groups

(2) Special care shall be taken to provide minority, marginalised and persons with special needs opportunities in areas of economic educational social and political feeds and access to employment

(3) Minorities and marginalised groups and persons with special needs shall be accorded dignity and respect free from abuse and discrimination of any nature and shall be given opportunities for self realisation and development

19 (1) Any person in the County may present a petition to a County governance organ or institution which shall be registered in a Petitions Register to be kept and maintained by the organ or institution as the case may be

Presentation of Petitions

(2) The register kept and maintained pursuant to sub-section (1) shall be accessible by the public during working hours and shall contain particulars of all petitions, the documents in support thereof and the decisions made thereon

20 (1) A petition under section 19 shall be in writing, typed or printed and presented in either the Kiswahili or English language and shall indicate,

Contents of a petition

- (a) The name and address of the petitioner
- (b) The governance organ, institution or official to whom the petition is addressed
- (c) The subject matter of the petition
- (d) A concise statement of the petition
- (e) Any documentary, evidence that the petitioner may wish to rely upon to support the petition at its hearing or consideration
- (f) An indication of the relief or action sought

(2) Upon receipt of a petition under sub section (1), and, on ascertaining and being satisfied that the petition meets the requirements of this Act, the receiving organ or institution may set down the petition for hearing or consideration in accordance with its rules of procedure and this Act

(3) Before hearing or considering the petition a County governance organ or institution may appoint a committee to investigate the subject matter of the petition

21 Without prejudice to the generality of section 20, a petition may be presented or submitted to the County Assembly by a petitioner or a member of the County Assembly on behalf of the petitioner in accordance with the Rules of Procedure of the County Assembly

Member of County Assembly may present a petition on behalf of a petitioner

22 (1) During the hearing or consideration of the petition, the County governance organ or institution or committee thereof may invite individuals to appear before it and testify or submit memoranda in respect thereof

Procedure at the hearing of a petition

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

(3) The presentations and comments given during a public hearing shall be recorded and a copy of it shall be publicized by posting a copy in a conspicuous place at the offices of the County government and on its website as the case may be

(4) A person giving evidence may within seven 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

(5) The county governance organs or institution or a committee thereof may, at its discretion, refuse to hear any irrelevant evidence or to listen to any unruly or unmanageable person giving evidence

(6) Any document received at the investigation of a petition shall not be withdrawn or altered without the knowledge and approval of the executive committee

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

(8) The committee appointed under section 28 shall, as soon as practicable after the conclusion of the investigation, submit its findings and recommendation to the county governance organ institution or committee that appointed it for a final decision to be made on the petition

(9) The county organ or institution shall, within fifteen days of the decision of the organ or institution, notify the petitioner thereof in writing and within a further fourteen days

- (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 county Gazette, print or electronic media; or
- (d) Publish the decision in such other manner as may be appropriate for the dissemination of information

22 Any petitioner aggrieved by or dissatisfied with the decision of the organ or institution may appeal to the Commission on Administration Justice pursuant to the Commission on Administrative Justice Act, 2011 Provided that no recourse shall be had to the Commission on Administrative Justice as aforesaid in respect of a decision of the County Assembly or its Committee

Appeal against decision on a petition

PART IV—FINANCIAL PROVISIONS

23 The funds of the Directorate shall consist of

Funds of the Directorate

- (a) Monies allocated by the County Assembly for the purposes of this Act, and
- (b) All monies from any other source lawfully provided, donated or advanced to the Committee

24 The financial year of the directorate and the Committee shall be the period of twelve months ending on the thirteenth day of June in each year

Financial Year of the Directorate

25 (1) The Committee shall cause to be kept proper books and records of accounts of income, expenditure, assets and liabilities of Committee which the director shall

Accounts and audits

(2) Within a period of three months after the end of each financial year, the director shall submit to the County Auditor-General the accounts of the Committee in respect of that year together with a

- (a) Statement of the income and expenditure of the Committee during that year and
- (b) Statement of the assets and liabilities of the Committee as of the last day of that financial year

(3) The annual accounts of the Committee shall be prepared, audited and reported upon in accordance with the provisions relating to public audit

PART V—MISCELLANEOUS

26 (1) The County governance organs and institutions may require the members of the Committee representing them and the County Executive Committee shall require the Director to sign a contract of performance in relation to their mandate under this Act

Performance contracts for the Director and Committee members

(2) A performance agreement under sub-section (1) shall describe the key outputs that the director and

Committee shall achieve in any financial year and such outputs shall be defined in terms of performance indicators and targets

(3) The County governance organs and institutions and or the County Executive Committee may request for an independent report on the implementations of the performance agreements under this section

EXECUTIVE COMMITTEE' POWERS OF DIRECTION

27 The County Assembly shall oversee the performance of the activities of the Directorate and Committee under this Act and may, in consultation with the Governor give the Committee directions on matters of policy not inconsistent with the provisions of this Act

Powers of the Executive Committee

ANNUAL REPORT

28 (1) The office shall at the end of each financial year cause an annual report to be prepared and submitted to the Governor and the County Assembly not later than three months after the end of the year to which it relates

Annual Reports

(2) The annual report shall contain, in respect of the year to which it relates—

- (a) The financial statement of the Committee,
- (b) A description of the activities undertaken and the outcomes of
- (c) public participation and
- (d) Any other information, that the Committee may consider relevant

(3) The Committee shall cause the annual report to be published and publicized in County Gazette and in at least one newspaper with national circulation and in such other manner as the Committee may determine

29 (1) The Committee shall ensure that all important and essential information affecting or of interest to the people of the County or any part of the County is disseminated in such a manner that it reaches as a wide a section of the County as is feasible

Management of information by the Directorate and the Committee

(2) Without prejudice to the generality of sub section (1), neither the director nor the Committee shall be required or obliged to give or disclose information contrary to the

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Constitution, this Act or any written law and every Member and staff of the Committee shall be required, prior to assumption, of office, to take an oath and sign a confidentiality agreement

(3) Subject to the Constitution, this Act or other written law as to the nature and confidentiality, any person may request the Committee or director for information on the County in their possession or custody

(4) Unless the Committee or director has a lawful reason to withhold such information in accordance with a written law, the Committee and or the director shall furnish the person with the information requested without undue delay

(5) The person making the request shall bear the reasonable cost and or expense of furnishing such information

OFFENCES

30 Any person who—

Offences under
the Act

- (a) Without justification or lawful excuse, threatens, obstructs, hinders or assaults a Member or staff of the Committee acting in the lawful execution of their mandate under this Act, or
- (b) Withholds or submits false or misleading information, or
- (c) Without lawful or reasonable excuse, fails to appear before the Committee or a County governance organ or institution or a committee thereof when required to do so, or
- (d) Knowingly misrepresents or misleads a Member or Staff of the Committee or County governance organ or institution discharging their or any of their mandate under this Act,

commits an offence and shall be liable to a fine, on conviction, not exceeding Kenya Shillings Five Hundred Thousand or to a term of imprisonment not exceeding two years or to both.

31. The County Assembly, in consultation with other County organs and institutions, may make regulations for the better carrying out of the provisions of this Act

Rules and
Regulations

FIRST SCHEDULE**PUBLIC PARTICIPATION GUIDELINES**

The following guidelines shall guide the county government and the Committee 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 purposes

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 document as widely as possible, including but not limited to providing hard copies, television advertisements, websites, community radio announcement 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 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 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 interested 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 client's desired results where that desired result conflicts with its professional judgement

MEMORANDUM OF OBJECTS AND REASONS

The Baringo County Public Participation Bill, 2014 in its memorandum of objects and reasons seeks to provide for a mechanism for the involvement of the people in Governance and participation in decision making processes

The Bill further seeks to promote democratic and accountable exercise of power by fostering unity in giving powers of self governance to the people of Baringo County by enhancing public participation in decision making processes

The Bill also seeks to promote involvement of the people in policy making processes by ensuring access to timely and accurate information, data, documents and other information relevant to formulation of policy and implementation

Additionally, the Bill seeks to promote enhanced and reasonable access to the process of formulating and implementing policies, laws, regulations including approval of developmental proposals, projects and county budget processes

In addition to the above, the Bill also seeks to promote reasonable balance in roles and obligation of county government and non state actors' decision making processes to promote shared responsibility and partnership to provide complimentary authority and oversight Therefore encouraging public private partnerships to encourage direct dialogue and concerted efforts and action in sustainable development

Finally, the Bill promotes the protection of the interests and rights of the minorities, the marginalized groups and disadvantaged communities and their access to relevant information from the County Government

Dated the 14th February, 2014

WESLEY LEKAKIMON,
Leader of Minority

