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CONTENT

Bill for Introduction into the Machakos County Assembly—

The Machakos County Public Participation Bill, 2014 .......................... 1

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MACHAKOS COUNTY PUBLIC PARTICIPATION BILL, 2014
ARRANGEMENT OF CLAUSES

Section

PART I—PRELIMINARY

1—Short title.
2—Interpretation.
3—Objects and purposes of the Act.
4—Guiding principles.

PART II—ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF THE MACHAKOS COUNTY COMMITTEE OF PUBLIC PARTICIPATION

5—Establishment of the Committee.
6—Composition of the Committee.
7—Appointment and qualifications of the Secretary and members.
8—Functions of the Committee.
9—Powers of the Committee.
10—Oath or affirmation of the Committee.
11—Sub-County Committees.
12—Terms of office.
13—Remuneration.
14—Removal from office.
15—Vacation office.
16—Filling of a vacancy.
17—Secretary.
18—Removal of the Secretary.
19—Meetings.
20—Employees of Committee.
21—Protection from personal liability.

PART III—CITIZENS’ PARTICIPATION FORUMS

22—County Citizens’ Participation Forum.
23—Sub-County, City and Urban area citizen participation forum.
24—Ward or village citizen participation forum.
25—Affirmative action programmes.

**PART IV—PETITIONS**

26—Form of Petition.
27—Procedure for presenting petition.
28—Consideration of petition.
29—Procedure in the investigation.
30—Publication of decision on petition.
31—Register of petitions.
32—Appeal against decision on a petition.
33—Petitions to the Assembly.

**PART V—FINANCIAL PROVISIONS**

34—Funds of the Committee.
35—Borrowing powers.
36—Financial year.
37—Annual estimates.
38—Accounts and audit.
39—Bank accounts.

**PART VI—MISCELLANEOUS**

40—Performance agreement.
41—County Executive Committee’s power.
42—Annual report.
43—Management of information.
44—Publicity.
45—Offences and general penalty.
46—Regulations.
SCHEDULES

FIRST SCHEDULE—Public Participation Guidelines
SECOND SCHEDULE—Meetings and Procedure for the Committee
THIRD SCHEDULE—Oath or Affirmation of Secretary and Members
FOURTH SCHEDULE—Form of a Public Petition
THE MACHAKOS COUNTY PUBLIC PARTICIPATION BILL, 2014

A Bill for

AN ACT of the Machakos County Assembly to give effect to Articles 1, 10 (2) (a), 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.

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

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

“County Secretary” means a County Secretary of Machakos County appointed under section 44 of the County Government Act, 2012;

“County 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;

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

“Committee” means the Machakos County Committee for Public Participation established under section 5;
“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 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.

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

(a) structures for public participation;
(b) mechanisms, processes and procedures for participation;
(c) receipt, processing and consideration of petitions, and complaints lodged by members of the community;
(d) notification and public comment procedures;
(e) public meetings and hearings;
(f) special needs of people who cannot read or write, people with disabilities, women and other disadvantaged groups;
(g) matters with regard to which community participation is encouraged
(h) the rights and duties of members of community; and
(i) any other matter that enhances community participation.

4. In addition to the requirements of section 87 of the County Governments Act, public participation in the government shall be guided by the following principles—
(a) the communities, organizations and citizens affected by any policy decision of the government shall have a 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—ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF THE MACHAKOS COUNTY COMMITTEE OF PUBLIC PARTICIPATION

5. (1) There is established a Committee to be known as the Machakos County Committee for Public Participation which shall be a public office in the county government and whose expenses shall be provided under the vote of the County Assembly.

(2) The Committee shall served and facilitated by the Secretariat appointed in accordance with section 7.

6. (1) The Committee shall comprise—

(a) the Governor or his representative who shall be the chairperson;

(b) the Senator or his representative who shall be the alternate chairperson;

(c) eight elected members to represent each sub county;

(d) four other elected members to represent each of the four urban areas namely, Machakos, .................and ..........; (insert names of the 4 major urban areas)

(e) four members nominated by the bodies and organizations specified under subsection (2), who shall be appointed by the Governor;

(f) ex-officio members representing the county departments specified under subsection (3); and
(g) the Secretary who shall be an ex-officio member.

(2) The members referred to under subsection (1) (e), shall be nominated by—

(a) an umbrella body representing professional associations in the county;

(b) an association representing the private sector in the county;

(c) a cluster representing the registered associations of the informal sector in the county; and

(d) a cluster representing the civil society and nongovernmental organizations.

(3) The members referred to under subsection (1) (f) shall be senior public officers representing the departments responsible for—

(a) finance;

(b) health;

(c) culture and social services;

(d) land and environment; and

(e) planning.

(4) The County Executive Committee shall facilitate and coordinate the nomination and election process through public fora.

(5) In appointing and electing members of the Committee, the County Executive Committee member shall ensure that—

(a) the Committee reflects the regional and ethnic diversity of the people within the county; and

(b) not more than two-thirds of the members are of the same gender.

7. (1) The there shall be a Secretary of the Committee who shall be appointed by the Committee —

(a) in a competitive and transparent manner;

(b) on merit; and
(c) in line with the constitutional requirements for public service.

(2) A person is qualified for appointment as the Secretary if that person—

(a) is a citizen of Kenya;

(b) holds a degree in social sciences from a recognized university;

(c) has knowledge and relevant experience in community service or social work; and

(d) meets the requirements of leadership and integrity set out in chapter six of the Constitution.

(3) A person shall not be qualified for appointment as the Secretary under section (2) if such person—

(a) is declared to be of unsound mind;

(b) is an un-discharged bankrupt; or

(c) has been removed from office for contravening the provisions of the Constitution or any other written law.

(4) The Secretary shall—

(a) be responsible to the Committee for the day-to-day management of the affairs of the secretariat;

(b) be the accounting officer;

(c) head of the secretariat;

(d) custodian of all records of the Committee;

(e) responsible for—

(i) executing decisions of the Committee;

(ii) facilitating, coordinating and ensuring execution of the Committee’s mandate;

(iii) ensuring staff compliance with public ethics and national values; and

(iv) the performance of such other duties as may be assigned by the law and the Committee.
(5) The County Executive Committee member may, upon recommendation of the Committee, appoint other members of the Secretariat.

8. (1) The Committee shall facilitate and co-ordinate public participation in the governance of the county as provided under the Constitution, this Act and any other law applicable to the county.

(2) In the performance of its functions under subsection (1), the Committee shall facilitate and oversee the effective coordination of public participation and shall—

(a) formulate policy directions for the conduct of public participation;

(b) facilitate and moderate public participation activities to ensure they are inclusive of the broad spectrum of the public and not limited to the traditional sector stakeholders;

(c) coordinate and promote cooperation between all participants in public participation;

(d) develop civic education programmes to promote public participation in public affairs;

(e) inform the public on whether financial resources correspond to the nature and scope of the public participation planned;

(f) provide information on whether there is sufficient and adequately trained staff to carry out the planned public participation;

(g) ensure that clear and reasonable timelines are established for public input and comment and that these timelines are communicated to the participants;

(h) ensure that the public participation device used is appropriate to the nature of the policy initiatives, issues involved, the target groups affected and the staff and resources available;

(i) establish a feedback process to the public including opportunities for the public to forward additional comments or input to the decision taken.
(j) develop an evaluation framework to the public participation plan;

(k) 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;

(l) ensure that public participation processes adhere to the relevant legislation, regulations, policies or guidelines affecting the rights and responsibilities of the public, officers and the different participants involved;

(m) establish whether there is support for the development of new public participation techniques and technologies;

(n) provide logistical support and strategies to the County Assembly, including the development of consultation plans and information facilitating public participation in any matter before the Assembly;

(o) maintain an up to date database or inventory of all its activities;

(p) 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;

(q) carry on research on matters relating to public participation generally;

(r) prepare and submit reports to the County Assembly on the status of the implementation of its functions and obligations under this Act;

(s) prepare and submit an annual report to the Governor for submission to the county assembly on the status of public participation in the affairs of county governance; and

(t) perform any other function as may be assigned by legislation.

(3) In the performance of its function and obligations under this section, the Committee shall be guided by the guidelines provided in the First Schedule.
9. (1) The Committee 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 Committee shall have power to—

(a) advice the county executive committee on matters of policy relating to public participation;

(b) enter into agreements or arrangements with any institution, association or professional organizations as the Committee may consider appropriate in furtherance of the purpose for which the Committee is established;

(c) enforce set standards regarding public participation;

(d) manage, supervise, secure and administer the assets of the Committee in such manner as best promotes the purpose for which the Committee is established;

(e) delegate any of its powers to any officer, employee, agent, section or committee of the Committee; and

(f) undertake any activity necessary for the fulfillment of any of its functions under this Act.

10. The Secretary and members of the Committee shall, before assuming office, take and subscribe to the oath or affirmation of office prescribed in the Third Schedule.

11. (1) The Committee may establish Sub-County committees for the better carrying out of its functions.

(2) A Sub-County committee established under subsection (1) may comprise members of a member of the Committee and such other persons who may not be more than the number determined by the County Executive Committee member.

(3) No decision of any sub-committee shall be effective unless it has been confirmed by the Committee.
12. (1) The Secretary shall be appointed for a term of three years and is eligible for re-appointment.

(2) A member of the Committee shall be appointed for a single term of three years and is eligible for re-appointment for one term.

(3) The Secretary and members of the Committee other than the ex-officio members shall serve on a full time basis.

13. (1) The Secretary and members of the Committee, other than the ex-officio members, shall be paid such salary, allowances and benefits as the County Executive Committee shall, with the approval of the County Assembly and on the advice of the Salaries and Remuneration Commission determine.

(2) The ex-officio members of the Committee shall be paid such allowances and benefits as the County Executive Committee shall, with the approval of the County Assembly and on the advice of the Salaries and Remuneration Commission determine.

14. (1) The Secretary or a member may be removed from office for—

(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) bankruptcy;

(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 board or committee; or

(g) absence from three consecutive meetings of the Committee without a reasonable explanation.

(2) A person may be removed from office of Secretary or member of the Committee on any of the grounds in subsection (1) by—

(a) the Governor;
(b) the Committee, supported by the vote of at least two-thirds of the members of Committee; or

(c) upon petition by the residents of a county.

(3) Before a person is removed from office under subsection (2), the person shall be given an opportunity to provide a defence against any of the allegations against him or her.

15. A person shall cease to be a member of the Committee if that person—

(a) resigns in writing, to the Governor;

(b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;

(c) is declared bankrupt;

(d) is unable to perform the functions of his or her office by reason of mental or physical infirmity;

(e) ceases to be a member of the nominating body section 6 (2); or

(f) dies.

16. Where a vacancy occurs in the membership of the Committee under section 14 or 15, the Governor shall, appoint a new member in accordance with the provisions of this Act.

17. (1) There shall be a secretary to the Committee who shall be competitively recruited by the County Public Service Board and appointed by the Governor.

(2) A person shall be qualified for appointment as a secretary to the Committee if the person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has at least ten years proven experience at management level;

(d) has extensive experience in public
administration; and

(e) meets the requirements of Chapter Six of the Constitution.

(3) The Secretary shall be the chief executive officer of the Committee and head of the secretariat and shall be responsible to the Committee.

(4) The Secretary shall hold office for a term of five years and shall be eligible for re-appointment for a further term of five years.

18. (1) The Secretary may be removed from office by the Governor in accordance with the terms and conditions of service if the person—

(a) is unable to perform the functions of the office by reason of mental or physical infirmity;

(b) is declared or becomes bankrupt or insolvent;

(c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;

(d) resigns in writing to the County Governor;

(e) is absent from three consecutive meetings within one financial year without reasonable cause;,

(f) is found guilty of professional misconduct by the relevant professional body;

(g) is disqualified from holding a public office under the Constitution;

(h) is convicted of an offence and is sentenced to imprisonment for a term of six months or more;

(i) fails to declare his or her interest in any matter being considered or to be considered by the Committee; or

(j) engages in any gross misbehaviour or gross misconduct.

(2) Before the Secretary is removed from office under subsection (1), the Secretary shall be given—
(a) sufficient notice of the allegations made against him or her; and
(b) an opportunity to present his or her defence against the allegations.

19. (1) The business and affairs of the Committee shall be conducted in accordance with the Second Schedule.
(2) Except as provided in the third Schedule, the Committee may regulate its own procedure subject to the law governing meetings and proceedings of Boards of State Corporations.
(3) The Committee 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 Committee.

20. The County Public Service Board may appoint such technical staff and other employees as may be necessary for the proper discharge of the functions of the Committee under this Act, and upon such terms and conditions of service as the County Public Service Board may determine.

21. No matter or thing done by a member of the Committee or any officer, employee or agent of the Committee shall, if the matter or thing is done in good faith while executing the functions, powers or duties of the Committee, render the member, officer, employee or agent personally liable for any action, claim or demand whatsoever.

PART III—CITIZENS’ PARTICIPATION FORUMS

22. (1) On the request of the County Executive Committee, a county government organ, member of the Senate or other entity, the Committee shall facilitate the convening of a citizens’ forum and shall convene a citizens’ forum once in three months to discuss any matter of public importance affecting the public or any community in the county or the delivery of services by the County Government.
(2) The Committee 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 Committee 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 Committee 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.

23. (1) On the request of a Sub-County or town administrator, city or municipal manager or member of the county assembly in the areas, the Committee shall facilitate the convening of a citizens’ forum to discuss and give views on—

(a) issues of interests in the Sub-County, city or urban area;

(b) the implementation of county policies and plans in the Sub-County, city or urban area; or

(c) the administration and functioning of the Sub-County, city or urban area; or

(d) the delivery of services by the County Public Service in the Sub-County, city or urban area.

(2) The provisions of subsections (2) to (6) of section 22 shall apply to a forum convened under this section.
24. (1) A ward or village administrator or a Member of the County Assembly may convene a ward or village citizen forum and the Committee shall facilitate the organization of the forum to discuss and give views on the following—

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

(2) The forum shall be open to all citizens of the ward or village who desire to attend and citizens shall be allowed to speak through representatives or directly.

(3) The convener of the forum shall appoint a secretary to take the minutes of the proceedings of the forum and shall, with the assistance of the Committee publicize the minutes throughout the ward or village and shall—

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

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

25. (1) The Committee shall ensure that the county government and its entities put in place affirmative action programmes to ensure that minorities and marginalized groups—

(a) participate in all matters that affect them and are represented in governance and other spheres of life;
(b) are provided with special opportunities in all areas of economic, educational, social,
religious and political fields;

(c) are provided with special opportunities for access to employment;

(d) develop their ethnic and cultural values, languages and practices; and

(e) have reasonable access to water, health services and infrastructure;

(f) pursue their personal development;

(g) live in dignity and respect and be free from abuse;

(h) are free from discrimination including but not limited on the basis of language, religion, culture, national or social origin, sex, caste, birth, descent or other status;

(i) are free from hostility, violence and abuse as a result of their ethnic, cultural, linguistic, religious or other identity.

PART IV—PETITIONS

26. (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.

(2) A petition to County Executive Committee shall be in the form set out in the fourth 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;

(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) subject to paragraph (m), 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) not have any letters, affidavits or other documents annexed to it;

(l) 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; and

(m) 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.

27. (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 25, the county Secretary may give such directions as are necessary to ensure that the petition is amended to comply with that section.

28. (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.

(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.

29. (1) The County Executive Committee, the relevant body 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 Executive Secretary or any person holding public office to appear before them to give evidence relating a petition;

(c) employ qualified persons to assist it in the discharge of their functions;

(d) with the support from the Committee, 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) The presentations and comments given during a public hearing shall be recorded and a copy of it shall be publicized by posting the copy in a conspicuous place at the offices of the county government and on the 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 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.

(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 Executive Committee or the relevant body for a final decision to be made on the petition.

(9) The County Secretary shall, within fifteen days of the decision of the County executive or the relevant body, in writing, notifies the petitioner of the decision.

30. The County Secretary shall, within fourteen days after the decision is communicated to the petitioner or petitioners, with support from the Committee —

(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.

31. (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.

32. Any petitioner who is dissatisfied by the decision of the county government or the relevant body may appeal to the Commission on Administrative Justice.

33. 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 V—FINANCIAL PROVISIONS

34. The funds of the Committee shall consist of—

(a) monies allocated by the County Assembly for the purposes of the Committee;

(b) such monies or assets as may accrue to the Committee in the course of the exercise of its powers or in the performance of its functions under this Act; and

(c) all monies from any other source provided, donated or advanced to the Committee.

35. (1) Subject to subsection (2), the Committee may borrow money required for the exercise of its functions and for meeting its obligations after approval by the Executive Committee member responsible for finance.

(2) The approval under subsection (1) may be either general or limited to a particular transaction and may be either conditional or unconditional.

36. The financial year of the Committee shall be the period of twelve months ending on the thirtieth day of June in each year.

37. (1) Before the commencement of each financial year, the Committee shall cause to be prepared estimates of the revenue and expenditure of the Committee for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Committee for the financial year concerned and, in particular, shall provide for—

(a) payment of the salaries, allowances, gratuities and other charges in respect of the staff and members of the Committee;

(b) maintenance of buildings and grounds of the Committee;

(c) funding of training, research and development of activities of the Committee;

(d) the funding of the schedules and organization of public participation meetings;
(e) the creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Committee may think fit.

(3) The annual estimates shall be approved by the Committee before the commencement of the financial year to which they relate and shall be submitted to the county secretary for tabling in County Assembly.

(4) No expenditure shall be incurred for the purposes of the Committee except in accordance with the annual estimates approved under subsection (3).

38. (1) The Committee shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Committee.

(2) Within a period of three months after the end of each financial year, the Committee 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 on 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.

39. The Committee shall open and maintain such bank accounts as shall be necessary for the performance of its functions.

PART VI—MISCELLANEOUS

40. (1) A performance agreement shall be made between the County Executive Committee Member and the Committee in relation to the mandate of the Committee.

(2) The performance agreement shall describe the key outputs that the Committee shall achieve in any financial year and such output shall be defined in terms of performance indicators and targets.
(3) The Executive Committee may request for an independent report on the implementation of the performance agreement.

41. The County Executive Committee member shall oversee the performance of the activities of the Committee under this Act and may, in writing, give the Committee directions on matters of policy not inconsistent with the provisions of this Act.

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

(2) The 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) the financial statements of the Committee;
(b) a description of the activities and outcomes of public participation; and
(c) any other information, that the Committee may consider relevant.

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

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

(2) A person may request for information within the mandate of the Committee in public interest.

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

(a) shall be addressed to the Secretary or such other person as the Committee may designate for that purpose;
(b) may, where the Committee incurs expense in providing the information, be subject to payment of a reasonable fee; and
(c) may be subject to confidentiality requirements of the Committee.
(4) Subject to the provisions of Article 35 of the Constitution and the law relating to freedom of information and data protection, the Committee 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 Committee.

(5) The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section.

(6) Every member and staff of the Committee shall sign a confidentiality agreement.

44. Subject to section 91 of the County Governments Act, the Committee shall, in such manner as it considers appropriate, publish a notice for public information specifying—

(a) the location of all its offices; and

(b) its address or addresses, telephone numbers and other means of communication or contact with the Committee.

45. A person who—

(a) without justification or lawful excuse, obstructs hands, threats a member of the Committee or a member of staff acting under this Act;

(b) submits false or misleading information;

(c) without reasonable excuse, fails to appear before a meeting of the Committee when required to do so;

(d) misrepresents to or knowingly misleads a member of the Committee or a member of staff of the Committee acting under this Act, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

46. (1) The County Executive Committee member may, in consultation with the Committee, make regulations
for the better carrying into effect of the provisions of this Act.

(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 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.8)
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 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. 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.19)

MEETINGS AND PROCEDURE FOR THE COMMITTEE

1. The County Secretary shall convene the first meeting of the Committee.

2. The Committee shall decide when and where it meets and the meetings shall be convened by the Secretary.

3. The Committee shall have at least six meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.

4. Unless three quarters of the members otherwise agree, at least seven days’ notice in writing of a meeting shall be given to every member.

5. A meeting shall be presided over by the Secretary or in his or her absence, by the vice-Secretary.

6. The members of the Committee shall elect a Deputy-Secretary from among themselves—

   (1) at the first sitting of the Committee; and

   (2) whenever it is necessary to fill the vacancy in the office of the Deputy-Secretary.

7. The Secretary and Deputy-Secretary shall not be of the same gender.

8. If any person has a personal or fiduciary interest in any matter before the Committee, and is present at a meeting of the Committee or any committee at which any matter is the subject of consideration, that person 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.

9. A disclosure of interest made under paragraph 8 shall be recorded in the minutes of the meeting at which it is made.

10. A person who contravenes paragraph 8 commits an offence and is liable, upon conviction, to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding seven years, or to both.
11. No member or staff of the Committee shall transact any business or trade with the Committee.

12. (1) Subject to paragraph 13, the quorum of the meeting shall not be less than half of the appointed members.

14. Where there is a vacancy in the Committee, the quorum of the meeting shall not be less than three appointed members.

15. A question before the meeting shall be decided with a supporting vote of at least two thirds of the members present.

16. The Committee shall keep minutes of proceedings of its meetings and decisions taken.

THIRD SCHEDULE (s.10)

OATH OR SOLEMN AFFIRMATION OF SECRETARY /MEMBER OF COMMITTEE

I .......................................................... having been appointed as (Secretary/ Member) of the Committee of Public Participation, do swear/solemnly affirm that I will without fear or favour, affection or ill-will, discharge the functions of the office of (Secretary/ Member) of the Committee, and that I will not, directly or indirectly, reveal any matter relating to such functions to unauthorized persons or otherwise in the course of duty.

So help me God.

Signed

.........................................................................................................................

Sworn/Declared before me this ......................... day of ................ 20 ............

Before me ..................................................

Signed ........................................

Chief Magistrate
FOURTH SCHEDULE  (s. 26)
FORM OF A PUBLIC PETITION

TO: The (Name of county) County Government/Assembly

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 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.
MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to give effect to Articles 1, 10 (2) (a), 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. This is intended to enhance public participation by the citizens of Machakos County with regard to issues that affect the county.

The Bill further seeks to establish a legislative framework to establish:

(a) structures for public participation;
(b) mechanisms, processes and procedures for participation;
(c) receipt, processing and consideration of petitions, and complaints lodged by members of the community;
(d) notification and public comment procedures;
(e) public meetings and hearings;
(f) special needs of people who cannot read or write, people with disabilities, women and other disadvantaged groups;
(g) matters with regard to which community participation is encouraged
(h) the rights and duties of members of community; and
(i) any other matter that enhances community participation.

The structure of the Bill is as follows:

**Part I** (clauses 1–4) of the Bill contains preliminary provisions. These include the short title to the proposed Act, interpretation of terms and phrases as used in the Bill, a list of objects and guiding principles.

**Part II** (clauses 5–21) of the Bill establishes the Machakos County Committee for Public Participation, its composition, functions and powers. This Part also provides for the appointment and qualifications of Secretary and members of the Committee, the terms of office, remuneration removal from office meetings, employees of Committee and protection from personal liability of its officers.

**Part III** (clauses 22–25) the Bill provides for citizens’ forums which includes; County, Sub-county, City and Urban area, Ward or village citizen participation forums and Affirmative action programmes.

**Part IV** (clauses 26–33) provides for the actualization of the citizens right to petition a County government as contemplated under section 88 of the County Government Act. This Part sets out the form of Petition to be filed by a citizen, the public procedure for presenting petition, econsideration of petition, investigation, the publication of decision on petition registration of petitions and appeal against decision on a petition and petitions to Assembly.

**PART V** (clause 34–39) sets out the financial provisions. This Part provides for the sources of the funds of the Committee, which includes budgetary allocations by county assembly and borrowing by Committee. It provides for period of financial year annual estimates, accounts and audit and opening and maintaining of bank accounts.

**Part VI** (clauses 40–46) of the Bill contains miscellaneous which include provisions of general in nature including performance agreement, annual reporting, management of information and the power of the County Executive Committee Member to make Regulations for purposes of giving full effect to the provisions of the Act.
The enactment of this Bill shall occasion additional expenditure of public funds to be provided through the estimates.

Dated the 24th September, 2014.

ALEXANDER NZAMBU KATHINZI,
Member of the County Assembly.