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THE HOMA BAY COUNTY CIVIC EDUCATION AND PUBLIC PARTICIPATION BILL, 2019

A Bill for

AN ACT of the Homa Bay County Assembly to provide for the requisite institutional framework for purposes of facilitating and implementing civic education and public participation programmes and for connected purposes

ENACTED by the County Assembly of Homa Bay as follows—

PART I – PRELIMINARY PROVISIONS

1. This Act may be cited as the Homa Bay County Civic Education and Public Participation Act, 2019 and shall come into force on the fourteenth day after its publication in the Kenya Gazette and County Gazette.

Short title and commencement

2. In this Act unless the context otherwise requires—

Interpretation

“Responsible authority” means the person responsible for civic education and public participation in the institutions set out under section 5.

3. The purpose of this Act is to provide for the requisite institutional framework for purposes of facilitating and implementing civic education and public participation programmes and in particular to—

Purpose of the Act

- (a) to give effect to the principles of public participation as provided for in Articles 10(2), 33(1)(a), 35, 69(1)(d), 174(c) and (d), 184(1)(c), 196, 201, and 232(1)(d) of the Constitution of Kenya;
- (b) promote democracy and participation of the people in accordance with Article 10 of the Constitution;
- (c) promote transparency and accountability in decision making;
- (d) enhance public awareness and understanding of governance processes;
- (e) promote community ownership of public decisions; and place the Homa Bay residents central in the decision making process;
- (f) promote public participation and collaboration in

governance processes;

- (g) establish mechanisms that will enable the citizens participate in setting budget priorities and monitor expenditures, and assess service delivery performance;
- (h) provide Homa Bay residents with a channel of feedback and the opportunity to freely provide comments and express grievances; and
- (i) provide timely notice and information to all Homa Residents for facilitation of public participation in policy making, throughout the planning.

4. The conduct of public participation shall be guided by the following principles —

Guiding principles

- (a) the public, communities and organisations to be affected by a decision shall have a right to be consulted and involved in the decision making process;
- (b) provision of effective mechanisms for the involvement of the public, communities and organizations that would be affected by or be interested in a decision;
- (c) equitable access to the information participants need to participate in a meaningful manner;
- (d) public views shall be taken into consideration in decision making;
- (e) development of appropriate feedback mechanisms;
- (f) promotion of sustainable decisions recognising the needs and interests of all participants, including decision makers; and
- (g) adherence to the principles of public participation as may be prescribed section 87 of the County Governments Act, 2012

PART II—UNDERTAKING CIVIC EDUCATION AND PUBLIC PARTICIPATION

5. (1) For the purposes of this Act, the responsible authority for the purpose of ensuring that the Act has been complied with shall be in the case of —

Duties of responsible
authority

- (a) The County Executive Committee, the County Secretary;
- (b) The County Executive departments, the relevant County Executive Committee Member;
- (c) The County Assembly, the Clerk of the County Assembly; and
- (d) Boards and any other county public entity, the Chief Executive Officer.

(2) The responsible authority shall—

- (a) co-ordinate public participation;
- (b) facilitate capacity building and provide support on the public participation process;
- (c) monitor and evaluate the public participation process;
- (d) develop and execute a civic education programme;
- (e) prepare an annual report on civic education and public participation in accordance with the County Governments Act, 2012; and
- (f) submit to the County Assembly the report in paragraph (e) by 1st December each year

6. (1) The responsible authority shall provide reasonable and meaningful opportunities for civic education and public participation.

Opportunities for
public participation

(2) In determining what is reasonable, the responsible authority shall take into consideration the—

- (a) nature of legislation or decision to be made;
- (b) importance of the legislation or decision; and
- (c) the intensity of the impact of the legislation or decision on the public.

7. The responsible authority shall facilitate continuing education on public engagement activities and techniques.

Public awareness

8. The responsible authority shall, before conducting civic education and public participation on a particular matter, identify—

Factors to be
considered

- (a) the purpose of the civic education and/or public participation;
- (b) level of the civic education and/or public

participation required;

- (c) urgency of the matter;
- (d) the number and circumstances of interested parties and affected parties; and
- (e) the ability of the targeted participants to access the necessary information and the venue.

9. (1) The responsible authority shall give the public at least fourteen day notice to make their input on the issue.

Issue of Notice

(2) For purposes of paragraph (1), the responsible authority shall establish mechanism to enable the widest reach which shall include but not limited to;

- (a) television stations;
- (b) information communication technology centres;
- (c) websites;
- (d) community radio stations;
- (e) public meetings;
- (f) traditional media;
- (g) print media; and
- (h) public address systems

10. (1) The responsible authority shall ensure that stakeholders have fair and equal access to the civic education and public participation process and the opportunity to influence the intended decision.

Access to civic
education and public
Participation process

(2) The responsible authority shall take all necessary measures to ensure the participation of persons with disabilities in the public participation processes by providing where necessary—

- (a) proper access to venues suitable for persons with disabilities;
- (b) sign language interpreters; and
- (c) braille.

(3) Where the targeted participants are not conversant in the national languages, the responsible authority shall provide an interpreter for those participants who wish to make their remarks in their local language.

11. (1) Before undertaking civic education and /or public participation, the responsible authority shall develop

Consultation
framework

a civic education and public participation programme.

(2) A civic education and public participation programme under subsection (1) shall clearly identify —

- (a) specific purposes for consultation;
- (b) the community, profession or groups to be consulted;
- (c) the length of the consultations;
- (d) whether submissions should be oral, written or both; and
- (e) the issues or matter for consultation.

12. The responsible authority shall establish and ensure maintenance of an online platform to enable access of information relating to the institution and any other notices to the public.

Online platform

13. Every civic education and public participation forum shall be undertaken within a realistic timeframe for consultation of at least seven days, allowing reasonable period for each stage of the process.

Timeframe for participation

14. The responsible authority shall ensure that —

Consultation documents

- (a) the consultation documents are as simple and concise as possible;
- (b) the documents shall provide a summary of the issues or matters for consultation, clearly setting out the questions to be addressed.

15. (1) The responsible authority shall —

Access to information for public participation

- (a) publish and distribute the documents for consideration as widely as possible, including but not limited to providing hard copies and posting on online platforms; and
- (b) ensure that the documents are published and distributed in a language and form that can be used by the public.

(2) A person may request for information relating to an issue under consideration.

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

- (a) shall be addressed to the responsible authority or such other person as the authority may designate for that purpose;

- (b) may, where the authority incurs expense in providing the information, be subject to payment of a reasonable fee; and
 - (c) may be subject to confidentiality requirements of the authority.
- (4) Subject to the provisions of Article 35 of the Constitution and the law relating to freedom of information and data protection, the responsible authority 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 responsible authority.
- (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.

16. The responsible authority shall ensure—

Processing of
responses

- (a) that all responses are carefully and independently analysed;
- (b) the final decision is made widely available to the public, including the reasons for the decisions taken; and
- (c) the disclosure of all relevant information for the public to understand and evaluate the decision made.

17. The responsible authority shall—

Credibility and
integrity of the
Process

- (a) undertake and encourage actions that build trust and credibility in the civic education and public participation process among all the participants;
- (b) be responsible for the validity of all data collected, analysis made, or plans developed by it or under its direction;
- (c) not engage in conduct involving dishonesty, fraud, deceit, misrepresentation or discrimination;
- (d) not accept any payments or gifts given contingent on an interested party's desired result where that desired result conflicts with its professional judgment;

- (e) in undertaking civic education and public participation, avoid relationships or actions, which could be legitimately interpreted as a conflict of interest; and
- (f) ensure there is no misrepresentation of facts relating to the relevant body.

18. (1) All participants, including the representatives of the responsible authority and all respondents, shall be courteous, respectful and civil in the civic education and public participation processes.

Conduct in public
Participation process

(2) Individuals who are disruptive shall be given a warning and, may, if necessary, be removed from a meeting.

(3) A persons freedom of expression under Article 33 of the Constitution shall be limited to the nature and extent specified under this section.

PART III—CIVIC EDUCATION AND PUBLIC PARTICIPATION FORUMS

19. (1) There is established—

Establishment of
Civic Education and
Public Participation
Forum

- (a) the county civic education and public participation forum convened by the responsible authority;
- (b) sub-county civic education and public participation forum in each sub county convened by the sub-county administrators;
- (c) ward civic education and public participation forum in each ward convened by the ward administrators; and
- (d) village civic education and public participation forum in each village convened by the village administrators;

(2) The Convener shall facilitate the forum to discuss and raise concerns on—

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

the area;

- (e) the County Government expenditure and implementation status reports on a quarterly basis;
- (f) any complaints to the County government for follow up and feedback after every three months;
- (g) annual monitoring and evaluation reports prepared by the county sectoral departments.

(2) The forum shall use the community conversation approach or any other such participatory approach and shall be open to all citizens of the area who desire to attend.

PART IV—MISCELLANEOUS PROVISIONS

20. The responsible authority for each entity may make regulations, with the approval of the County Assembly, for the better carrying out of the provisions of this Act.

Regulations

MEMORANDUM OF OBJECTS AND REASONS

Section 101 of the County Governments Act, 2012 provides that county legislation shall provide the requisite institutional framework for purposes of facilitating and implementing civic education programmes.

The purpose of the Act is to provide for the requisite institutional framework for purposes of facilitating and implementing civic education and public participation programmes and for connected purposes.

Statement of the delegation of legislative powers and the limitations of fundamental rights and freedoms

The Bill does not delegate legislative powers neither does it limit any fundamental right and freedom.

Statement of how the Bill concerns county government

The Bill concerns the county government of Homa Bay in line with the provisions of Section 101 of the County Governments Act, 2012 which obliges the county assembly to enact a county legislation which shall provide for the requisite institutional framework for purposes of facilitating and implementing civic education and public participation programmes.

Statement as to whether the Bill is within the meaning of Article 114 of the constitution

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Statement of financial implication

The Bill has no financial implication whatsoever.

NANCY ANYANGO,
Nominated Member of County Assembly.