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THE LAMU COUNTY PUBLIC PARTICIPATION BILL, 2014

A Bill for

AN ACT of the County Assembly of Lamu to provide for the establishment of legal framework for facilitating public participation in county government policy processes and service delivery and for connected purposes.

ENACTED by the County Assembly of Lamu as follows —

PART I – PRELIMINARY

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

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

“Advisory Committee” means the Public Participation Advisory Committee established under Section 8;

“County Department” means any office or department established in the county government by the County Public Service Board or under any written law;

“Department” means the department of public participation established under Section 5;

“Executive Member” means the County Executive Committee Member for the time being responsible for public participation;

“Public” has the same meaning assigned under the County Governments Act, 2012;

– public participation includes the processes and methods designed to consult, involve and inform the public or stakeholders in order to allow those who would potentially be affected by a decision, any policy, legislation, program, project to have input into the process.

“Stakeholder” means a person or group of persons who have an interest in a public issue or who are likely to be directly or indirectly affected by a public issue, decision or policy whether negatively or positively;

“the public”, when used in relation to public participation in this Act, means —

- (a) the residents of the county;
- (b) the rate payers of a particular urban area;
- (c) any resident civic organization or non-governmental, private sector, labour organization or faith based organization with an interest in the governance of the county or an urban area;
- (d) non-resident persons who by virtue of their temporary presence in the county make use of services or facilities provided by the county or an urban area.

Purpose.

3. The purpose of this Act is to enhance, promote and facilitate public participation in the county government and specifically to —

(a) facilitate the implementation of constitutional provisions set out under —

- (i) Article 1 on sovereignty of the people;
- (ii) Article 10 on national values;
- (iii) Article 35 on access to information;
- (iv) Article 37 on right to petition;
- (v) Article 48 on access to justice;
- (vi) Article 174 on the objects of devolution;
- (vii) Article 201 on principles of public finance;
- (viii) Article 232 on values and principles of public service;
- (ix) Section 14 of Part 2 of the Fourth Schedule to the Constitution; and

(x) Any other provision related to public participation.

(b) give effect to public participation framework stipulated under the County Governments Act, 2012, the Public Financial Management Act, 2011 and the Urban Areas and Cities Act, 2011;

- (c) promote participatory democracy;
- (d) transparency and accountability in decision making;
- (e) community empowerment and support;
- (f) promote partnership and collaboration in public processes;
- (g) enhance public awareness and understanding of government processes;
- (h) reduce conflicts related to public or government decisions; and
- (i) enhance community ownership of public decisions.

Principles of public participation.

4. The following principles shall guide public participation under this Act —

(a) provision of meaningful information in a format and language that is readily understandable and tailored to the needs of the target groups;

(b) provision of information in advance of consultation activities and decision making;

(c) mutual consultations and dialogue and exchange of views on matters affecting a community or group of persons;

(d) openness and transparency;

(e) inclusiveness in representation of views including vulnerable groups and the marginalized;

(f) processes free of coercion;

(g) objectivity in engagement and non-politicization of issues;

(h) constructive dialogue between county government and the public or stakeholders;

(i) clear mechanism for responding to people's concerns, suggestions and grievances; and

(j) civic duty and responsibility.

PART II — CO-ORDINATION OF PUBLIC PARTICIPATION IN THE COUNTY ASSEMBLY

Public Participation Office.

5. There is an established office to be known as the Public Participation Office which shall be an office in the County Assembly service.

Functions of the Public Participation office.

6. The Public Participation Office shall be responsible for —

(a) providing support and advice to the County Assembly on managing public participation process;

(b) facilitating Committees of the County Assembly when carrying out public participation programs;

(c) preparing reports on public participation facilitated by County Assembly; and

(d) carrying out any other function that may be assigned by the County Assembly Service Board.

Relevant Committee.

7. There shall be a relevant Committee of the County Assembly which shall be responsible for —

(a) providing general direction to the public participation processes in the County Assembly;

(b) preparing annual report on County Assembly public participation processes for consideration by the County Assembly;

(c) providing link between the Public Participation Office and the County Assembly.

Ward forums.

8. (1) A member of County Assembly shall, in every six months, convene a Ward forum for the purposes of deliberating governance, policy or service delivery matters of concern to Ward residents.

(2) The Member of County Assembly shall, subject to sub-section (4), facilitate persons with disabilities to attend and participate in the citizen forums.

(3) The member of the County Assembly shall cause a record of proceedings to be kept.

(4) The County Assembly shall provide support for facilitation of the forums referred to under this section.

(5) The member of County Assembly shall submit a report of each forum to the County Assembly.

PART III — CO-ORDINATION OF PUBLIC PARTICIPATION IN THE COUNTY EXECUTIVE

Establishment of the
Department.

9. There is established department to be known as the Department of Public Participation which shall be an office in the county public service.

Functions of
Department.

10. The functions of the Department shall be to —

(a) co-ordinate public participation by other departments or agencies;

(b) facilitate capacity building and provide support to other county government departments on public participation processes;

(c) mobilize and organize the public, stakeholders and local communities to participate in county governance and decision making processes;

(d) facilitate the realization of the purpose of this Act as well as integration of the principles stipulated under Section 7 in public participation processes;

(e) monitor and evaluate public participation processes undertaken by each department or agency;

(f) sensitize the public on county structures and opportunities for public participation;

(g) co-ordinate implementation of decisions and recommendations of the advisory committee;

(h) receive public complaints on issues emerging from public participation processes and liaising with respective departments for redress;

(i) prepare an annual report on public participation in accordance with the County Governments Act;

(j) advise the Executive Member generally on the appropriate policies, plans and strategies for enhancing public participation in the county; and

(k) carry out any other function in furtherance to the objects and purpose of this Act and as may be assigned by the Executive Member.

Officers of the
Department.

11. The County Public Service Board, in consultation with the Executive Member, shall designate such staff as are necessary to work in the department.

PART IV — PUBLIC PARTICIPATION PROCESS

Public Participation
Advisory Committee.

12. (1) There is established a committee to be known as Public Participation Advisory Committee.

(2) The Committee shall consist of —

(a) the chief officer for the time being responsible for public participation who shall be the chairperson;

(b) the chief officer for the time being responsible for public service;

(c) one person representing the non-governmental organizations in the county appointed by the Executive Member from among three persons recommended by the forum of the non-governmental organizations;

(d) two persons representing faith-based organizations in the county appointed by the Executive Member from among six persons recommended by the forum of the faith-based organizations;

(e) one person representing the private sector appointed by the Executive Member from among six persons recommended by the forum of the private sector organizations;

(f) one person representing the youth appointed by the Executive Member from among three persons recommended by the forum of organizations working with the youth in the county;

(g) one person representing persons with disabilities appointed by the Executive Member from among three persons recommended by the forum of organizations working with persons with disabilities and involved in local governance in the county;

(h) one person representing women appointed by the Executive Member from among three persons recommended by the forum of women organizations involved in local governance in the county;

(i) one person appointed by the Executive Member from each sub-county from among persons experienced in public governance, local development or administration;

(j) all town managers;

(k) the officer responsible for co-ordinating national government functions in the county; and

(l) the officer in charge of the department who shall be the secretary.

(3) For a person to qualify for appointment under sub-section (2) (c), (e), (f), (h), (i), (j), the person must —

(a) be a holder of at least a diploma from a recognized institution;

(b) meet the requirements of Chapter Six of the Constitution; and

(c) must be a resident of the county.

Functions of the
Advisory Committee.

13. (1) The Advisory Committee shall be responsible for —

(a) advising the County Executive Committee on appropriate public participation processes, strategies and policy frameworks;

(b) providing a platform for dialogue on county policy and service delivery processes;

(c) monitoring the county public participation processes and advising the County Executive Committee on appropriate measures for enhancing the process.

(2) The Executive Member shall prescribe procedures for conduct of business for the advisory committee.

(3) The Department shall provide secretariat services to the Public Participation Advisory Committee.

Citizen forums.

14. (1) There shall be citizen participation forums in —

(a) the county convened by the Governor;

(b) the sub-county convened by the respective sub-county administrator;

(c) the Ward convened by the respective Ward administrator;
(d) the Village convened by the respective Village administrator;

(e) each town convened by the town manager.

(2) The citizen forums stipulated under sub-section (1) shall be convened at least once every four months and shall provide a platform for consultations, review and deliberation on critical matters affecting the respective level.

(3) The respective persons described under sub-section (1) shall —

(a) cause a record of proceedings during each citizen forum to be kept and shall ensure that where practicable, the decisions of such forums conform with the decision making process by the county government;

(b) facilitate persons with disabilities to attend and participate in the citizen forums.

(4) A Member of Parliament or County Assembly may participate in any of the citizen forums stipulated under this Act.

Stakeholder and
public engagement.

15. Each county department or Committee of the County Assembly where applicable, shall —

(a) while developing legislation and policy or designing or implementing programs or delivering services, encourage and engage the relevant stakeholders and the public;

(b) continuously report and communicate to the stakeholders and the public on the process, outcome and impact of policies, programs and services delivered;

(c) provide or issue adequate and sufficient notice and information to stakeholders or the public where the stakeholders or the public are required to participate in an issue or forum stipulated under this Act.

Stakeholder
engagement plan.

16. (1) The Department shall ensure that the principles stipulated under this Act and the laws specified under Section 4 are integrated in each county department's or agency's policies, plans and service delivery processes.

(2) Each county department or agency or Committee of County Assembly shall develop and implement a stakeholder engagement plan.

(3) A stakeholder engagement plan shall provide, among others, for —

- (a) objectives of stakeholder engagement;
- (b) major issues requiring public and stakeholder engagement and consultations;
- (c) time frame within which public consultations would be held;
- (d) process to be undertaken in stakeholder and public participation;
- (e) determination of public participation method;
- (f) method of providing information to the public.

Levels of public participation.

17. (1) While carrying out public participation, a county department or agency may —

- (a) inform the public in order to enhance understanding the problem, alternatives, opportunities and solutions;
- (b) consult in order to obtain public feedback on analysis, alternatives and decisions;
- (c) involve the public directly throughout the process to ensure that public concerns and aspirations are consistently understood and considered;
- (d) collaborate with the public in each aspect of the decision, including development of alternatives and the identification of the preferred solution;
- (e) empower the public to make decision in regard to any public issue.

(2) A Committee of the County Assembly may apply the levels described under sub-section (1) (a) and (b) while carrying out public participation.

Public participation methods.

18. A county department or agency or Committee of the County Assembly may apply any of the following public participation methods in addition to the platforms stipulated under the County Governments Act, 2012 —

- (a) public meetings;
- (b) public hearings;
- (c) workshops;
- (d) citizen advisory or consultation committees;
- (e) surveys;
- (f) focus groups;
- (g) direct mail;
- (h) newsletters;
- (i) invitations for public submission;

- (j) partnerships and collaboration;
- (k) joint auditing and evaluation of county government performance including projects audits;
- (l) internet based interactive platforms.

Public private partnership.

19. Notwithstanding Section 14, a county department or agency may enter into public private partnership with any person for the purposes of effectively discharging a function.

Good practices and standards in stakeholder engagement.

20. In facilitating stakeholder engagement or public participation, a county department or agency or Committee of the County Assembly shall adopt the following standards and good practices —

- (a) stakeholder identification and analysis;
- (b) information disclosure;
- (c) stakeholder consultation;
- (d) negotiation and partnerships;
- (e) grievance management through establishing accessible and responsive means for stakeholders to raise concerns and grievances;
- (f) stakeholder involvement in monitoring and evaluation of projects, programs and policies;
- (g) reporting to stakeholders on performance;
- (h) efficient and strategic management of stakeholder processes.

Stakeholder mapping.

21. Each county department or agency or Committee of the County Assembly shall —

- (a) identify and liaise with the stakeholders in its sector;
- (b) maintain and publish database of the stakeholders identified under paragraph (a); and
- (c) ensure continuous and effective communication with the stakeholders.

Electronic governance.

22. (1) Each county department or agency shall provide all applicable information, forms, documents, statistics and data through electronic system such as online system, websites and portal in a timely, efficient and in a usable manner in order to facilitate public participation.

(2) The Executive Member responsible for information, communication and technology shall ensure that the systems referred under sub-section (1) facilitate interactive engagement with county residents and are comprehensive in terms of the information provided.

Citizens' duties
and responsibilities.

23. A resident or any member of the public with interest in county affairs has the duty and responsibility to —

- (a) constructively participate in the forums and platforms created by the county government for public participation;
- (b) share information and make proposals to the county government during the law, policy and decision making processes as well as service delivery mechanisms; and
- (c) contribute where appropriate and practicable resources for developing or implementing public services delivery processes.

Notices.

24. (1) The department shall install notice boards in the most appropriate and conspicuous places in each village.

(2) The Executive Member shall ensure that all relevant notices related to public participation are posted in the notice boards provided under this section in a timely manner.

(3) Notwithstanding Section (1) and (2), a county department or agency shall use the most appropriate communication methods to publicize any process, forum or issue requiring public participation.

Annual report.

25. (1) The Department shall prepare an annual report on public participation which shall contain, among others —

- (a) the number of public participation forums facilitated by each department or agency;
- (b) the level of implementation of stakeholder engagement plan;
- (c) the level of engagement by participants during public participation process;
- (d) the level of incorporation of proposals made or issues raised by stakeholders or the public;
- (e) challenges faced in the implementation of this Act and proposed mitigation measures;
- (f) any other prescribed matter.

(2) The Department shall submit the report to the Executive Member not later than 2 months after the end of financial year.

(3) The Executive Member shall, within twenty one days, transmit the report to the County Executive Committee for consideration.

PART V — PUBLIC PETITION TO COUNTY EXECUTIVE

Right to petition.

26. This part seeks to give effect to Article 37 of the Constitution and Section 88 (1) of the County Governments Act, 2012.

Form of petition.

27. A petition to County Executive shall be in the form set out in the 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 Executive Committee;
- (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.

Procedure for
presenting the

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

petition.

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

Consideration of
petition.

29. (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 department or body for consideration.

(2) The County Executive Committee or the relevant department or body may appoint a committee to investigate or assess the subject matter of the petition.

Procedure of
investigating or
assessing the petition.

30. (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 person responsible for any matter related to the petition evidence relating a petition;

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

(d) where appropriate 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:

Provided that where any information is in the opinion of the investigating committee may be deemed to be sensitive and any public disclosure may pose a threat to the person giving the evidence, the investigating committee may exclude such information from public disclosure.

(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 County 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 24 shall, as soon as practicable after the conclusion of the recommendation or recommendations 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, notify the petitioner of the decision.

Publication of
decision on petition

31. The County Secretary shall, within fourteen days after the decision is communicated to the petitioner or petitioners—

(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.

Register of petitions.

32. (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 sub-section (1) shall be accessible to the public during working hours.

PART VI — GENERAL PROVISIONS

Regulations.

33. The Executive Member may, in consultation with the Department, make regulations for the better carrying into effect of the provisions of this Act.

SCHEDULE (s. 27)

FORM OF A PUBLIC PETITION

To: County Government of Lamu

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 to the following:

(Here, briefly state the reasons underlying the petition and request for the intervention of the Government by outlining the grievances or problems and summarizing the facts which the petitioners wish the county government to consider)

THAT:

(Here confirm that efforts have been made to have the matter addressed by the relevant body, and it failed to give satisfactory response.)

THAT:

(Here confirm that the issues in respect of which the petition is made are not pending before any court of law, or constitutional or legal body.)

THEREFORE your humble petitioners PRAY that the County Government:

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

and your PETITIONERS will ever Pray.

Name of petitioner	Full Address	National ID Passport No.	or Signature/Thumb print
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Subsequent Pages

PETITION concerning _____

(Here, repeat the summary in first page)

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

MEMORANDUM OF OBJECTS AND REASONS

Firstly, this Bill aims at providing for a legal mechanism within which county residents or any person with interest in county governance matters to participate in policy or service delivery matters.

Secondly, the Bill seeks to implement the Constitutional provisions relating to public participation as well as the requirements under the County Governments Act, 2012.

Thirdly, the Bill provides for co-ordination of public participation in the County.

PART I of the Bill provides for preliminary matters.

PART II of the Bill provides for co-ordination of public participation in the County Assembly. It provides for the establishment of the Public Participation Office in the County Assembly as well as a Select Committee on public participation for providing general direction on public participation.

PART III of the Bill provides for co-ordination of public participation in the County Executive. It provides for the establishment of the Department of Public Participation, which is responsible for co-ordinating public participation, other departments, facilitating capacity building, mobilizing and organizing the public and stakeholders and monitoring and evaluating.

PART IV of the Bill provides for public participation process. It sets out the principles to be followed during public participation process such as provision of meaningful information, mutual consultations, openness and transparency, and inclusiveness, among others. It provides for the establishment of the Public Participation Advisory Committee that brings together representatives from faith-based organizations, NGOs, women, youth, persons with disabilities and private sector. The Committee's main function is to advise the County Executive Committee on appropriate public participation processes, strategies and policy frameworks, providing platform for engagement and monitoring public participation processes. The part also provides for facilitation of citizen forums and guidelines for managing public participation such as stakeholder mapping and engagement, stakeholder engagement plan, best practices and standards of public participation, levels of public participation and public participation methods and preparation of annual reports.

PART V of the Bill provides for procedures for public petition as required under Article 37 of the Constitution and Section 88 (1) of the County Governments Act, 2012.

PART VI of the Bill provides for the general provisions mainly the power of the Executive Member to make Regulations.

Dated the 15th August, 2014

Hon. Azhar Ali Mbarak (MCA, Shella)

***Chairperson; Trade, Tourism, Information and E-Government
Lamu County Assembly***