

**SPECIAL ISSUE**

*Kisii County Gazette Supplement No. 9 (Acts No. 2)*



REPUBLIC OF KENYA

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**KISII COUNTY GAZETTE  
SUPPLEMENT**

**ACTS, 2015**

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**NAIROBI, 14th May 2015**

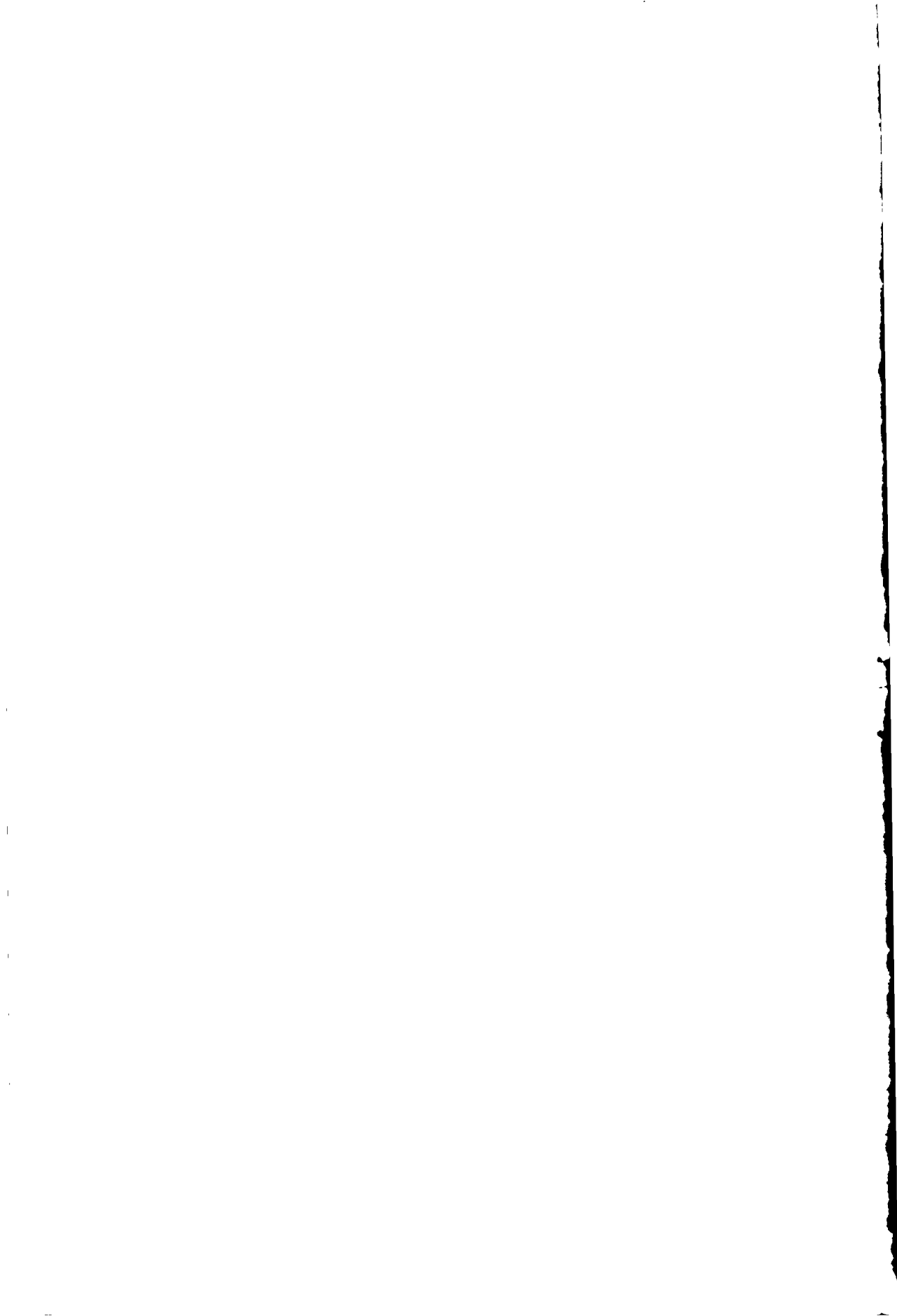
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# **THE KISII COUNTY PUBLIC PARTICIPATION ACT, 2014**

**No. 2 of 2015**

*Date of Assent: 7th May, 2015*

*Date of Commencement: 28th May, 2015*

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## THE KISII COUNTY PUBLIC PARTICIPATION ACT, 2015

**AN ACT of the County Assembly of Kisii to give effect in ensuring, co-ordinating and establishing modalities and platform for public participation of communities and locations to develop the administrative capacity for effective exercise of the functions and powers and participation in governance of the County and for connected purposes**

**ENACTED** by the County Assembly of Kisii as follows—

### PART I—PRELIMINARY

#### Short Title.

1. This Act may be cited as the Kisii County Public Participation Act, 2015.

#### Interpretation.

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

“Constitution” means the Constitution of Kenya, 2010;

“Executive committee” means Kisii county executive committee established in accordance with Article 176 of the Constitution;

“County secretary” means a county secretary 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*;

“County Public Officer” means any person appointed by the 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;

“Forum” means county elected leaders forum established under section 29 of this Act

“Government” means The Kisii County Government;

“Office” means the Office of Public Participation established under section 5;

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

“Public Participation” means any process that directly engages the public in decision making and gives full consideration to public input in making that decision;

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

### **Objects and Purposes of the Act.**

3. The objects and purposes of this Act are, subject to Articles 1(4), 10, 201 and 232 (1) (e) of the Constitution, to establish a legislative framework to give effect to—

- (a) paragraph 14 of part 2 of the Fourth Schedule of the Constitution;
- (b) the objects and principles of devolution set out under Article 174 (c) and (d) of the Constitution; and
- (c) Part VIII of the County Governments Act, 2012.

### **Guiding Principles.**

4. Subject to section 87 of the County Governments Act, public participation in the county government activities will be guided by the following principles—

- (a) the communities, organizations and citizens to be affected by a decision shall have a right to be consulted and involved in the decision making process;
- (b) public contributions shall be taken into consideration when making the decisions;
- (c) promotion of sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers;
- (d) facilitation of the involvement of communities, organizations and citizens potentially affected by or interested in a decision;

- (e) mandatory participants consultation and input in designing how they participate;
- (f) participants equitable access to the information they need to participate in a meaningful manner;
- (g) communication to participants on how their input affected the decision;
- (h) adherence to the national values and principles of governance set out under Article 10 of the Constitution;
- (i) adherence to the values and principles of public service set out by Article 232 of the Constitution;
- (j) adherence to the principles of leadership and integrity set out in Chapter Six of the Constitution; and
- (k) adherence to the principles of citizen participation set out in Section 87 of the County Governments Act, 2012.

## **PART II—ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF THE OFFICE OF PUBLIC PARTICIPATION.**

### **Establishment of Office.**

5. There is established an office to be known as the Office of Public Participation which shall be a public office in the county government and whose remuneration, administration costs and other expenses shall be provided by the County Assembly and payable from the county Revenue Fund.

### **Composition of Office.**

6. (1) The Office shall comprise—
- (a) a Chairperson who shall be appointed by the Governor with approval of the County Assembly;
  - (b) three members nominated by the bodies and organizations specified under sub-section (2), who shall be appointed by the Governor with approval of the County Assembly
  - (c) ex-officio members representing the County departments specified under subsection (3); and
  - (d) the secretary who shall be an ex-officio member.
- (2) The members referred to under sub-section (1) (b), shall be nominated by—
- (a) an association representing the private sector in the county;



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

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

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

(a) Finance;

(b) Public Works;

(c) Agriculture;

(d) Environment

(e) Education; and

(f) Planning.

### **Appointment and Qualifications of Chairperson and Members**

7. (1) The appointment and nomination of the chairperson and Members of the Office shall be—

(a) carried out in a competitive and transparent manner;

(b) based on merit; and

(c) in line with the constitutional requirements for public service.

(2) A person is qualified for appointment as Chairperson or Member of the Office if that person—

(a) is a citizen of Kenya;

(b) holds a degree 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 Chairperson or as a Member under section (1) 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.

**Functions of the Office.**

8. (1) The Office of Public Participation shall facilitate and coordinate public participation in the governance of the County as provided under paragraph 14 of part 2 of the Fourth Schedule to the Constitution including the participation of communities, organizations and citizens forming the public in the decentralized units within the county.

(2) In the performance of its function and obligations under subsection (1), the Office will facilitate and oversee the effective coordination of the operations of the Office and shall—

- (a) establish structures for public participation as is required under section 91 of the County Governments Act
- (b) ensure that public participation activities are inclusive of the broad spectrum of the public and not limited to the traditional sector stakeholders;
- (c) formulate policy relating to public participation;
- (d) advise County Government on the operations of the Office;
- (e) formulate training, development and capacity building for its employees;
- (f) collaborate with relevant institutions in the county to promote access to information and civic education programmes;
- (g) provide the public with a clear context for which public participation is to be undertaken and how decisions will be made.
- (h) inform the public of existing or potential linkages with other policy initiatives, issues or public participation activities;
- (i) inform the public on whether financial resources correspond to the nature and scope of the public participation planned;
- (j) provide information on whether there is sufficient and adequately trained staff to carry out the planned public participation;
- (k) ensure that clear and reasonable timelines are established for public input and comment and that these timelines are communicated to the participants;
- (l) 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;
- (m) establish a feedback process to the public including opportunities for the public to forward additional comments or input to the decision taken;

- (n) develop an evaluation framework to the public participation plan;
- (o) 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;
- (p) 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;
- (q) establish whether there is support for the development of new public participation techniques and technologies;
- (r) 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;
- (s) maintain an up to date database or inventory of all its activities;
- (t) 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;
- (u) carry on research on matters relating to public participation generally;
- (v) prepare and submit an annual report and any other periodic reports to the Governor for submission to the County Assembly on the status of public participation in the affairs of County Governance;
- (w) monitor and evaluate the performance of the Office mandate; and
- (x) perform any other function as may be assigned by legislation.

(3) In the performance of its functions and obligations under this section and Part III, the Office shall be guided by the guidelines provided in the First Schedule.

(4) Despite sub-section (1), the County Government Organ or Entity desiring to be facilitated to convene a public participation activity as required by any relevant law, to show to the Office that it can mobilize the relevant public for that public participation activity.

(5) It shall be the responsibility of every County government organ or entity to relevant public for any public participation activity.

(6) Two months before the end of the financial year, every County Government Organ or Entity required to undertake public participation must submit a timetable of public participation activities envisioned for the next financial year to the Office.

**Powers of the Office.**

9. (1) The Office 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 sub-section (1) the Office shall have power to—

- (a) advise 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 Office may consider appropriate in furtherance of the purpose for which the Office is established;
- (c) enforce set standards regarding public participation;
- (d) manage, supervise, secure and administer the assets of the Office in such manner as best promotes the purpose for which the Office is established;
- (e) delegate any of its powers to any officer, employee, agent, section or committee of the Office;
- (f) undertake any activity necessary for the fulfillment of any of its functions under this Act.

**Committees of Office.**

10. (1) The Office may establish functional based committees for the better carrying out of its functions.

(2) A committee established under sub-section (1) may comprise members of the Office and such other co-opted persons who may not be more than two as the Office may determine.

(3) No decision of any committee shall be effective unless it has been confirmed by the Office.

**Term of Office.**

11. (1) The Chairperson shall be appointed for a term of three years and is eligible for re-appointment upon satisfactory performance.

(2) The Chairperson and members of the Office shall serve on a part time basis.

**Remuneration.**

12. (1) The chairperson and members of the Office, other than the ex-officio members, 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.

(2) The ex-officio members of the Office 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.

**Removal from Office.**

13. (1) The Chairperson 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 Office without a reasonable explanation.

(2) A member may be removed from office of chairperson or member of the Office on any of the grounds in sub-section (1) by—

- (a) the Governor;
- (b) the Office, supported by the vote of at least two-thirds of the members of Office; or
- (c) upon petition by the residents of the County.

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

**Vacation of Office.**

14. A person shall cease to be a member of the Office 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.

**Filling of Vacancy.**

15. Where a vacancy occurs in the membership of the Office under section 13 or 14, the Governor shall, appoint a new member in accordance with the provisions of this Act.

**Secretary.**

16. (1) There shall be a secretary to the Office 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 Office 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 Office and head of the secretariat and shall be responsible to the Office.

(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.

**Removal of Secretary.**

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

- (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) resigns in writing to the County Governor;
- (d) without reasonable cause, is absent from three consecutive meetings of the board or committee within one financial year;
- (e) (f) found guilty of professional misconduct by the relevant professional body;
- (f) disqualified from holding a public office under the Constitution;
- (g) convicted of an offence and is sentenced to imprisonment for a term of six months or more;
- (h) where required, fails to declare his or her interest in any matter being considered or to be considered by the Office;
- (i) 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.

### **Meetings.**

18. (1) The business and affairs of the Office shall be conducted in accordance with the Second Schedule.

(2) Except as provided in the third Schedule, the Office may regulate its own procedure subject to the law governing meetings and proceedings of Boards of State Corporations.

(3) The Office 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 Office.

### **Employees of the Office.**

19. The Chief Officer shall make available to the Office on full time basis, the services of adequate County Public Officers as are necessary for the proper and efficient exercise of the functions of this Act.

### **Protection from personal liability.**

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

## **PART III—COMMUNITY PARTICIPATION AND INVOLVEMENT**

### **Culture of Democratic Governance**

**21.** (1) The County must develop a culture of democratic governance that complements a system of participatory governance, and the Office must for this purpose—

- (a) encourage, and create conditions for the local community to participate in the affairs of the County, including in—
  - (i) the preparation, implementation and review of its integrated development plan;
  - (ii) the establishment, implementation and review of its performance management system in the County;
  - (iii) the monitoring and review of its performance, including the outcomes and impact of such performance;
  - (iv) the preparation of its budget; and
  - (v) strategic decisions relating to the provision of county services and functions.
- (b) contribute to building the capacity of—
  - (i) the local community to enable it to participate in the affairs of the county; and
  - (ii) ward representatives and staff to foster community participation; appropriate for the purpose

(2) Despite sub-section (1) must not be interpreted as permitting interference with a County Government right to govern and to exercise the executive and legislative authority of the County.

### **Participation by Local Community**

**22.** (1) Participation by the local community in the affairs of the county must take place through—

- (a) political structures for participation in terms of the County Government Act, Urban Areas and Cities Act, Public Finance Management Act and other relevant Acts;
- (b) the mechanisms, processes and procedures for participation in participatory governance established in terms of this Act and any other relevant Act;
- (c) other appropriate mechanisms, processes and procedures established by the office or County Assembly; and



(d) generally applying the provisions for participation as provided for in this Act.

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

- (a) the receipt, processing and consideration of petitions and complaints lodged by members of the local community;
- (b) notification and public comment procedures, when appropriate;
- (c) public meetings and hearings by the county government organs and other political structures and political office bearers of the county when appropriate;
- (d) consultative sessions with locally recognized community organizations and, where appropriate, minorities; and
- (e) report-back to the local community.

(3) When establishing mechanisms, processes and procedures in terms of sub-section (2) the Office must take into account the special need of—

- (a) people who cannot read or write;
- (b) people with disabilities;
- (c) women; and
- (d) other disadvantaged groups.

(4) The County Executive Committee Member may establish one or more advisory committees consisting of persons who are not ward representatives to advise the County Executive Committee member and the Office on any matter within the County Government competence. When appointing the members of such a committee, gender representation must be taken into account.

### **Communication by Office**

**23.** (1) The Office must communicate to its community information concerning—

- (a) the available mechanisms, processes and procedures to encourage and facilitate community participation;
- (b) the matters with regard to which community participation is encouraged;
- (c) the rights and duties of members of the local community; and
- (d) county governance, management and development.

(2) When communicating the information mentioned in sub-section (1), a County Government must take into account—

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

### **Notification by Office**

**24.** (1) When anything must be notified by the Office through the media to the local community in terms of this Act or any other applicable legislation, it must be done—

- (a) in the local newspaper or newspapers of its area;
- (b) the Office website; or
- (c) by means of radio broadcasts covering the area of the County.

(2) Any such notification must be in the official languages, having regard to language preferences and usage within its area.

(3) A copy of every notice that must be published in the *County Gazette* or the media in terms of this Act or any other applicable legislation must be displayed at the Office and County Government main offices.

(4) When the Office invites the local community to submit written comments or representations on any matter before the County Government, it must be stated in the invitation that any person who cannot write may come during office hours to a place where a staff member of the Office named in the invitation will assist that person to transcribe that person's comments or representations.

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

(6) If the form referred to in sub-section (5) relates to the payment of money to the County Government or to the provision of any service, the assistance must include an explanation of its terms and conditions.

### **County Citizens' Participation Forum.**

**25.** (1) On the request of the county executive committee, a county government organ, member of the Senate concerning the county citizen participation forum, the Office shall facilitate resource for the convening of a citizens' participation forum and shall convene a citizens' participation 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 Office 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 Office 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 Office 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.

### **Sub-County and Urban Area Citizen Participation Forum.**

**26.** (1) On the request of a sub-County or Town Administrator, City or Municipal Manager or Member of the County Assembly in the areas for a sub-county, city or urban area citizen participation forum, the Office shall facilitate the convening of a citizens' participation 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 25 shall apply to a forum convened under this section.

### **Ward or village citizen participation forum.**

**27.** (1) A ward or village administrator or a member of the county assembly may convene a ward or village citizen participation forum and the Office shall facilitate the organization of the forum to discuss and give views on – with respect to 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 Office 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.

### **Citizen Initiative Forum.**

**28.** (1) A person from this County may request facilitation for purposes of convening a citizen initiative forum from the Office, provided that the Office shall not facilitate more than one forum within a period of three months.

(2) Where the Office declines to issue a request under sub-section (1), the Office shall issue written reasons for such decline.

(3) A person dissatisfied with the decision of the Office under sub-section (2) may appeal to the County Executive Committee Member for review of that decision.

**PART IV – COUNTY LEADERS’ PARTICIPATION FORUM****County Leaders’ Forum**

**29.** (1) There is established the Kisii County Leaders Forum pursuant to Section 91 (f) of the County Governments Act

(2) The County leaders Forum shall be composed of—

- (a) the Governor who shall be the Convener of the forum;
- (b) the Deputy Governor;
- (c) the Senator (or Senators where applicable);
- (d) the elected and nominated Members of Parliament from the County;
- (e) the Speaker of the County Assembly;
- (f) the elected and nominated members of the County Assembly;
- (g) the County Commissioner
- (h) the County Executive Committee Members; and
- (i) the County Secretary who shall be the Secretary to the Forum;

(3) The County Leaders Forum shall—

- (a) consider the integration of national and constituency development plans in the County Development Plan and assess the effectiveness of the implementation of the County Development Plan;
- (b) consider the integration of the national legislative agenda with the County Development Plan and propose a common legislative agenda;
- (c) propose issues and strategies for engagement with the National Government, Independent Commissions and Offices, on matters that affect the County Development;
- (d) recommend socio-economic development goals and provide policy advice to the County Government.
- (e) study measures to improve to improve the implementation of official development assistance to the County.
- (f) Assess the effectiveness of the implementation of the National Development Plan in the County;
- (g) propose integration of environment principles and practices into the county development plan: