

**THE VIHIGA COUNTY CIVIC ENGAGEMENT BILL, 2018**

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*Clause*

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### *A Bill for*

*AN ACT of Vihiga County Assembly to establish modalities and a platform for Citizen Participation in the governance of the County, and for connected purposes.*

ENACTED by the Vihiga County Assembly, as follows –

### PART I □ PRELIMINARY

- Short title            1. This Act may be cited as the Vihiga County Citizen Participation Act, 2018.
- Interpretation.        2. In this Act, unless the context otherwise requires –
- “Assembly” means the Vihiga County Assembly;
- “Constitution” means the Constitution of Kenya, 2010;
- “county secretary” means a county secretary appointed under section 44 of the County Governments Act, 2012;
- “county Gazette” means a *gazette* published by the authority of the county government or a supplement of such *gazette*
- “Directorate” means the Directorate of Citizen Participation established under section 5;
- “Executive committee” means Vihiga county executive committee established in accordance with Article 176 of the Constitution;
- “Executive committee member” means the executive committee member responsible for administration in the county;

**“Government”** means Vihiga county government;

**“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;

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

**“person”** includes a natural person, company, association or other body of persons whether incorporated or unincorporated;

**“the public”**, when used in relation to Citizen Participation in this Act, means –

- (a) a person who is a resident of the county; or
- (b) the rate payers within the County; or
- (c) any civic organization or non-governmental, private sector or labour organization resident within the County with an interest in the governance of the County; or
- (d) Non-resident persons who, because of their temporary presence in the county make use of services or facilities provided by the County.

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## **OBJECT 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;
- (c) Part VIII of the County Governments Act, 2012; and
- (d) the Second Schedule of the Urban Areas and Cities Act.

## **Guiding principles.**

**4.** Citizen Participation in the county government activities will be guided by the following principles –

- (a) timely access to information, data, documents, and other information relevant or related to County policy formulation and implementation;
  - (b) reasonable access to the County process of formulating and implementing policies, laws, and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards;
  - (c) protection and promotion of the interest and rights of minorities, marginalized groups and communities in the County and their access to relevant information;
  - (d) legal standing to interested or affected persons, organizations, and where pertinent, communities, to appeal from or, review decisions, or redress grievances, with particular emphasis on persons and traditionally marginalized communities, including women, the youth, and disadvantaged communities;
  - (e) reasonable balance in the roles and obligations of the County government and non-state actors in decision-making processes to promote shared responsibility and partnership, and to provide complementary authority and oversight;
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- (f) promotion of partnerships between the County government and the private sector, such as joint committees, technical teams, and citizen commissions, to encourage direct dialogue and concerted action on sustainable development;
  - (g) recognition and promotion of the reciprocal roles of non-state actors' participation and governmental facilitation and oversight;
  - (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; and
  - (j) Adherence to the principles of leadership and integrity set out in Chapter Six of the Constitution.
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## **PART II – ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF THE DIRECTORATE OF CITIZEN PARTICIPATION.**

### **Est of Directorate**

**5.** (1) There is established a directorate to be known as the Directorate of Citizen Participation.

(2) The Directorate shall be headed by the Director of Citizen Participation who shall be a public officer from the department responsible for administration within the county government.

### **Committees of the Directorate**

**6.** (1) The Directorate may establish committees for the better carrying out of its functions.

(2) A committee established under subsection (1) shall comprise –

- (a) public officers of the Directorate;
- (b) six members appointed by the Governor as approved by the County Assembly and nominated by any of the representative organizations specified in sub-section (3); and
- (c) the public officers specified in subsection (4).

(3) The members appointed under subsection (2)(b) shall be nominees of the following organizations

- (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;
- (d) a cluster representing the registered neighborhood associations in the county; and
- (e) a cluster representing the civil society and nongovernmental organizations;
- (f) an association of urban areas and cities.

(4) The members referred to under subsection (2)(c) shall be senior public officers representing the departments responsible for –

- (a) Finance;
- (b) Health services;
- (c) Roads, Transport and Public Works;
- (d) Agriculture, Fisheries and Livestock Development;
- (e) Environment and Natural Resources;
- (f) Education, Culture and Social Services;
- (g) Trade, Industry, Tourism and Co-operatives;
- (h) Lands, Housing and Planning;
- (i) Youth and Sports Affairs; and
- (j) Legal affairs.

(4) In appointing the members of the Directorate under sub-section (2)(b), the Governor and the County Assembly shall ensure that –

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

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

Appointments and 7. (1) A person is qualified for appointment as <sup>qualifications of</sup> member of the committee if that person –  
members.

- (a) is a citizen of Kenya;
- (b) holds a degree from a recognized university in Kenya;
- (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.

(2) A person shall not be qualified for appointment 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 Directorate. 8. (1) The Directorate of Citizen Participation shall facilitate and co-ordinate Citizen 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 functions and obligations under subsection (1), the Directorate will facilitate and oversee the effective coordination of the operations of the Directorate and shall –

- (a) establish structures for Citizen Participation as is required under section 91 of the County

No. 17 of 2012.

Governments Act, 2012;

- (b) ensure that Citizen Participation activities are inclusive of the broad spectrum of the public and not limited to the traditional sector stakeholders;
- (c) provide the public with a clear context for which Citizen Participation is to be undertaken and how decisions will be made.
- (d) inform the public of existing or potential linkages with other policy initiatives, issues or Citizen Participation activities;
- (e) inform the public on whether financial resources correspond to the nature and scope of the Citizen Participation planned;

- (f) provide information on whether there is sufficient and adequately trained staff to carry out the planned Citizen 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 Citizen 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 Citizen Participation plan;
- (k) ensure that the public, affected groups, and stakeholders are informed of the results of the Citizen Participation process and how their input was used in the decision taken;
- (l) ensure that Citizen 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 Citizen Participation techniques and technologies;
- (n) provide logistical support and strategies to the County Assembly, including the development of consultation plans and information facilitating Citizen 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 Citizen Participation, facilitate public education and training programmes in relating to Citizen Participation;
- (q) carry on research on matters relating to Citizen Participation generally;
- (r) prepare and submit reports to the County Assembly on the status of the implementation of its function



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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 Citizen 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 Directorate shall be guided by the guidelines provided in the First Schedule.

Powers of the **9.** (1) The Directorate may do or perform all such Directorate.

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 Directorate shall have power to –
  - (a) advise the county executive committee on matters of policy relating to Citizen Participation as envisaged in the Constitution;

- 
- (b) enforce set standards  
regarding Citizen

Participation;

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

- (d) delegate any of its powers to any officer,  
employee, agent, section or committee of the Directorate;

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

Term of Committee members

**10.** A member of a committee of the Directorate shall be appointed for a single term of three years, which shall not be renewable.

Remuneration. **11.** (1) The members of the Directorate and its committees shall be paid such allowances as the County Executive Committee shall determine.

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Removal from **12. (1)** A member may be removed from office for –  
Directorate.

- (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;
- (g) absence from three consecutive meetings of the Directorate without a reasonable explanation; and
- (h) in the case of the public officers, on ceasing to hold their respective public offices.

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(2) Before a member is removed from office under subsection (1)(a) to (g), the member shall be given an opportunity to provide a defence against any of the allegations against him or her.

Vacation of office. **13.** A person shall cease to be a member of the Directorate or 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;
- (c) is declared bankrupt;
- (d) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or
- (e) Ceases to be a member of the nominating body section 6(2).

Filling of Vacancy. **14.** Where a vacancy occurs in the membership of the Directorate under section 12 or 13, the Governor shall, appoint a new member in accordance with the provisions of this Act.

Secretary. **15.** (1) There shall be a secretary to the Directorate who shall be appointed by the Executive Committee Member responsible for administration and who shall be a public officer.

Meetings. **16.** (1) The business and affairs of the Directorate shall be conducted in accordance with the Second

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Schedule.

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

(3) The Directorate 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 Directorate.

Employees of the Directorate. **17.** 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 Directorate under this Act, and upon such terms and conditions of service as the County Public Service Board may determine.

Protection from personal liability. **18.** No matter or thing done by a member of the Directorate or any officer, employee or agent of the Directorate shall, if the matter or thing is done in good faith while executing the functions, powers or duties of the Directorate, render the member, officer, employee or agent personally liable for any action, claim or demand whatsoever.

**PART III – CITIZENS’ PARTICIPATION**



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## FORUMS

General  
Citizens'  
Participation  
Forum.

19. (1) On the request of the county executive committee, a county government organ, member of the Senate or other entity, the Directorate shall facilitate the convening of a citizens' participation forum and shall convene a citizens' participation forum at least once every six 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 Directorate 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.

The Directorate shall appoint a secretary for every forum to take the minutes of the proceedings of the forum

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and shall publicize the minutes throughout the county-

- (f) 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
  - (g) giving feedback on the action taken on the issues raised.
- (3) The Directorate 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 persons living with disabilities.
- (4) No meeting shall be convened for the purpose of promoting, opposing or discussing the election of any person as a member of that County Government or as a Member of Parliament.
- (5) Nothing in this section shall be construed as derogating from the provisions of any other written law relating to the holding of public meetings.

County Budget and **20.(1)** There is hereby established the Vihiga <sup>Economic Forum</sup> County Budget and Economic Forum.

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(2) The Vihiga County Budget and Economic Forum shall consist of –

- (a) the Governor of the County who shall be the chairperson;
- (b) other members of the county executive committee;
- (c) a number of representatives, not being public officers, equal to the number of executive committee members appointed by the Governor from persons nominated by the organisations specified in sub-section (3).

Cap 412C (3) The members appointed under subsection (2) shall be nominees of the following organisations –

- (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;
- (d) a cluster organization representing labour associations in the county;
- (e) a cluster organization representing women associations in the county;
- (f) a cluster organization representing associations of persons living with disability in the county;;
- (g) a cluster organization representing the elderly persons in the county;

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- (h) a cluster organization representing faith based groups in the county; and
  - (i) such other groups as may be required determined in accordance with the provisions of the Public Finance Management Act.

(4) The purpose of the Forum shall be to provide a means for the consultation by the county government on -

- (a) preparation of county financial plans;
- (b) preparation of the county fiscal strategy paper
- (c) preparation of the county budget review and outlook paper;
- (d) matters relating to budgeting, the economy and financial management at county level.

(3) The executive committee member may make such regulations as may be necessary to provide for the better carrying out of this section.

Other  
Consultative  
Forums

**21.(1)** On the request of the county executive committee, the Directorate shall facilitate the convening of such consultative forums as may be required by any law other than the County Budget and Economic Forum.

(2) The consultative forums may be convened by the Directorate, in consultation with the relevant county executive committee member responsible for each department to address among other local issues -

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- (a) proposed county policy papers;
  - (b) proposed county legislation;
  - (c) proposed public private partnerships;
  - (d) proposed county integrated plans; and
  - (e) such other matters as the county executive committee may determine from time to time.

(3) The Executive Committee Member responsible for administration shall prepare such regulations as may be necessary to give effect to the establishment and conduct of the proceedings of the consultative forums.

Sub-county,  
City and  
Urban area  
citizen  
participation  
forum.

**22.** (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 Directorate 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 subcounty, 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 19 shall apply to a forum convened under this section.

Ward or village **23.** (1) A ward or village administrator may, in citizen participation forum. consultation with the Directorate, convene a ward or village citizen participation forum and the Directorate shall facilitate the organization of the forum to discuss and give views on-

- (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

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assistance of the Directorate 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.

Affirmative action **24.** (1) The Directorate shall ensure that the county programmes. government and its agencies put in place affirmative action programmes to ensure that minorities and marginalised groups –

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- (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.

County            **25. (1)** The Directorate, in consultation with the  
Communication



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Framework county department responsible for communication, shall establish mechanisms to facilitate dissemination of information on the various citizen participation forums to the public in the form of media with the widest public outreach in the county, which may include –

- (a) television stations;
- (b) information communication technology centres;
- (c) county websites;
- (d) community radio stations; (e) public meetings; and (f) traditional media.

(2) The Directorate shall encourage and facilitate other means of mass communication including traditional media.

Notification of 26. (1) When convening any citizens forum under  
Citizens this Part III, the Directorate shall ensure that –  
Participation  
Forums

- (a) a notice is published in at least one national daily newspaper having circulation within the county at least 21 days prior to the proposed forum; and
- (b) the notice is announced in at least one community radio station within the county at least 21 days prior to the proposed forum.

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- (2) The notices in subsections 1(a) and (b) shall -
- (a) include an information statement summarising particulars of the subject matter of the proposed consultative forum; and
  - (b) inform citizens on various ways in which to access any documents relating to the subject matter of the proposed consultative forum; and
  - (c) invite the public to submit written comments or representations to the county government in respect of the proposed subject matter of the forum indicating the time and date within which such written comments or representations should be made; the following reports are submitted for deliberation by the County Assembly or at which decisions

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(3) The Directorate may, at its own discretion, use such other means of communication in addition to those prescribed in subsection (1) above to notify and invite the public to the citizens' participation forums convened under this Part III.

Assembly  
Meetings to be  
open to the  
Public

**27.** (1) The meetings of the County Assembly shall be open to the public and any organs of State where

concerning the following reports are to be taken –

- (a) annual report on the implementation status of the county policies and plans;
- (b) annual performance reports in respect of the county performance management plan;
- (c) annual reports of all loans made to the county government;
- (d) annual report on citizen participation in the affairs of the county government;
- (e) any report on the deviation from the financial objectives in the relevant County Fiscal Strategy Paper; and

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(f) such other reports as may be deemed necessary from time to time.

- (2) The Directorate shall liaise with the County Assembly to ensure that the public is notified, in compliance with the provisions of section 26, of the date and time of the meeting at which the reports specified in subsection (1) shall be deliberated.
- (3) The general sittings of the County Assembly shall be open to the public, or any media, and the county assembly is prohibited from excluding the public, or any media, from any sitting unless in exceptional circumstances where the speaker has determined that there are justifiable reasons for doing so.

#### **PART IV – PETITIONS**

Form of petition. **28.** A petition to the County Executive Committee shall be in the form set out in the Third Schedule and shall –

- (a) be handwritten, printed or typed;
- (b) be in English or Kiswahili and be written in respectful, decorous and temperate language devoid of abusive, obscene or insulting 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;

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- (f) be clearly numbered on every sheet if it consists of more than one sheet;
  - (g) 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;
  - (h) confirm that the issues in respect of which the petition is made are not pending before any court or other constitutional or legal body;
  - (i) 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;
  - (j) 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;
  - (k) 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;
  - (l) not have any letters, affidavits or other documents annexed to 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.

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Procedure for presenting petition. to the **29.** County (1) A petitionExecutive er shall submit his, her or its petitionCommittee by delivering the petition to the county secretary.

(2)The county secretary shall, within fourteen 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 28, 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. **30.** (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 county department for consideration.

(2) The county executive committee or the relevant county department relating to the petition may appoint a committee to investigate the subject matter of the petition.

Procedure in the investigation **31.** (1) The county executive committee, the relevant county department or a committee appointed in relation to a petition may hold a 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 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 Directorate, hold public hearing in relation to the petition, where the county executive committee deems it necessary to hold such public hearing.

(2) The evidence given by a person invited under subsection (1) shall be taken down in writing and a copy of it availed to the person who gave the evidence.

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- (3) The presentations and comments given during a public hearing shall be recorded and shall constitute a public record to which members of the public shall have reasonable access on such terms and conditions as the Directorate may determine without derogating from the provisions of Article 35 of the Constitution.
- (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.

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- (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 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.

Publication of decision on Petition

**32.** The County Secretary shall, within fourteen days after the decision is communicated to the petitioner or petitioners, with support from the Directorate –

- (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;



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- (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.

**33.** (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.

Appeal against decision on a petition

**34.** Any petitioner who is dissatisfied by the decision of the county government or the relevant body may appeal to the Commission on Administrative Justice pursuant to the Commission on Administrative Justice Act, 2011.

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Petitions to  
Assembly

35. 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**

Funds of the  
Directorate.

36. The funds of the Directorate shall consist of –

- (a) monies allocated by the County Assembly for the purposes of the Directorate;
- (b) such monies or assets as may accrue to the Directorate 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 Directorate.

Financial year.

37. The financial year of the Directorate shall be the <sup>period</sup> of twelve months ending on the thirtieth day of June in each year.

Annual estimates.

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

(2) The annual estimates shall make provision for all the estimated expenditure of the Directorate 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 Directorate; maintenance of buildings and grounds of the Directorate;
- (b) funding of training, research and development of activities of the Directorate;
- (c) the funding of the schedules and organization of Citizen Participation meetings;
- (d) 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 Directorate may think fit.

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

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

Accounts and audit. **39.** (1) The Directorate shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Directorate.

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

(a) statement of the income and expenditure of the Directorate during that year; and

(b) statement of the assets and liabilities of the Directorate on the last day of that financial year.

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

Bank accounts. **40.** The county executive committee member responsible for finance may open bank accounts on behalf of the Directorate and appoint a person responsible for maintaining such bank accounts as shall be necessary for the performance of its functions.

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**PART VI – MISCELLANEOUS**

Performance management plan.      **41.** (1) A performance management plan shall be prepared by the Directorate and approved by the county executive committee in relation to the mandate of the Directorate.

(2) The performance management plan shall describe the key outputs that the Directorate 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 management plan.

Executive Committee's power of direction.      **42.** The County Executive Committee shall oversee the performance of the activities of the Directorate under this Act and may, in writing, give the Directorate directions on matters of policy not inconsistent with the provisions of this Act.

Annual report.      **43.** (1) The Directorate shall, at the end of each financial year cause an annual report to be prepared.

(2) The Directorate shall submit the annual report to the Governor and the County Assembly not later than six weeks after the end of the year to which it relates.

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

- (a) the financial statements of the Directorate;
- (b) a description of the activities and outcomes of Citizen Participation; and
- (c) any other information, that the Directorate may consider relevant.

(4) The Directorate 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 Directorate may determine.

Management      **44.** (1) The Directorate shall publish and publicize of information. all important information affecting the county within its mandate.

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

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

- (a) shall be addressed to the Secretary of the Directorate or such other person as the Directorate may designate for that purpose;
- (b) may, where the Directorate incurs expense in providing the information, be subject to payment of a reasonable fee; and
- (c) may be subject to confidentiality requirements of the Directorate.

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- (4) Subject to the provisions of Article 35 of the Constitution and the law relating to freedom of information and data protection, the Directorate 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 Directorate.
- (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 Directorate shall sign a confidentiality agreement.

Publication of **45.** Subject to section 91 of the County Governments <sup>county</sup> government contacts Act, the Directorate 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 Directorate.

Offences and **46.** (1) A person who –

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penalty. (a) without justification or lawful excuse, obstructs

hinders, threatens a member of the Directorate 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 Directorate when required to do so;

(d) misrepresents to or knowingly misleads a member of the Directorate or a member of staff of the Directorate acting under this Act,

commits an offence and is liable on conviction to a fine not exceeding five hundred thousand Kenya shillings or to imprisonment for a term not exceeding two years or to both.

(2) Every person who violates or fails to comply with any provision of this Act for which no other penalty is provided, commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand Kenya shillings or imprisonment for a term not exceeding eighteen months or both.

Review. **47.** A person who is aggrieved by a decision of the Directorate under this Act may apply to the Directorate for review of that decision.

Regulations.



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48. (1) The executive committee member responsible for matters relating to administration may, in consultation with the Directorate, make regulations for the better carrying into effect of the provisions of this Act.

(2) Regulations under this Act may provide for the following matters –

- (a) structures for participation;
- (b) mechanisms, processes and procedures for participation;
- (c) receipt, processing and consideration of petitions, and complaints lodged by members of the public;
- (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 citizen participation is encouraged;
- (h) the rights and duties of members of the citizens; and
- (i) any other matter that enhanced citizen participation.

(3) A provision of a regulation made under this Act may –

- (a) apply generally or be limited in its application;
- (b) apply differently according to different factors;
- (c) authorise any matter or thing to be done from time to time; or

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(d) do any combination of those things.

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(4) Pursuant to Article 94(6) of the Constitution, the legislative authority delegated to the Executive Committee Member in this section shall be exercised only for the purpose and intent specified in this section and in accordance with the principles and standards set out in the Interpretation and General Provisions Act and the Statutory Instruments Act.

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**FIRST SCHEDULE (s.8(3))**

**VIHIGA COUNTY CITIZEN PARTICIPATION GUIDELINES**

The following guidelines shall guide the county government and the Directorate when conducting citizen 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 sector of the public to be consulted, the subject matter for consultation and purpose of such consultation.
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 or a combination of the above.
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.

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6. Ensure that stakeholders have fair and equal access to the Citizen Participation process and their opportunity to influence decisions.
  7. Undertake and encourage actions that build trust and credibility for the process among all the participants.
  8. Ensure the accuracy of all data collected, analyses performed, or plans developed by it or under its direction.
  9. Ensure that there is no misrepresentation of work performed or that was performed under the relevant body's direction.
  10. Examine all of its relationships or actions, which could be legitimately interpreted as a conflict of interest by clients, officials, the public or peers.

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**SECOND SCHEDULE (s.18(1))**

**MEETINGS AND PROCEDURE FOR THE DIRECTORATE**

1. The county secretary shall convene the first meeting of the Directorate.
2. The Directorate shall decide when and where it meets and the secretary of the Directorate shall convene all meetings after the initial meeting.
3. The director of citizen participation shall preside over the meetings of the Directorate and its committees, and in his or her absence, by a person duly designated in writing by the director.

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4. The Directorate and the committees shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.
  5. Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member of the Directorate or the committees.
  6. The director of citizen participation and the secretary of the Directorate shall not be of the same gender.
  7. If any person has a personal or fiduciary interest in any matter before the Directorate, and is present at a meeting of the Directorate 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.
  8. A disclosure of interest made under paragraph 7 shall be recorded in the minutes of the meeting at which it is made.
  9. A person who contravenes paragraph 7 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.
  10. No member or staff of the Directorate shall transact any business or trade with the Directorate.

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11. Subject to paragraph 12, the quorum of the meeting shall not be less than half of the appointed members.
  12. Where there is a vacancy in the Directorate, the quorum of the meeting shall not be less than three appointed members.
  13. A question before the meeting shall be decided with a supporting vote of at least two thirds of the members present.
  14. The Directorate shall keep minutes of proceedings of its meetings and decisions taken.

**THIRD SCHEDULE (s. 28)**

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**FORM OF PUBLIC PETITION**

TO: The Vihiga 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:-**



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*(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.**

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

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## MEMORANDUM OF OBJECTS AND REASONS

This draft Bill seeks to establish the framework for the county Government's engagement with the public in respect of matters relating to, *inter alia*, planning, policy making and budgeting within the Vihiga County. Article 196 of the Constitution of Kenya, 2010 enjoins each County Assembly to conduct its business in an open manner, hold its sittings and those of its committees, in public, and facilitate Citizen Participation and involvement in the legislative and other business of the assembly and its committees.

The County Assembly is also prohibited from excluding the public, or any media, from any sitting unless in exceptional circumstances the speaker has determined that there are justifiable reasons for doing so.

There are two broad dimensions of citizen participation namely, indirect involvement and direct involvement. Indirect involvement acknowledges that electoral officials and professional administrators should act on behalf of the citizens in a representative democracy. Direct involvement suggests that citizens are the owners of the government and should be involved in the decisions of the County.

Within this concept of citizen participation are at least eight thematic areas that constitute the core elements of citizen participation, that is citizen awareness, capacity building, planning, implementation, monitoring & evaluation, feedback and reporting mechanisms, financial resource mobilization and citizen engagement forums all of which must of necessity be represented in one form or the other within a legislation for Citizen Participation.

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The Bill is structured as follows –

*Section 1* provides for the short title of the Act when enacted.

*Section 2* provides for the interpretations of terms used in the Act. This is intended to provide clarity during the interpretation and implementation of the Act.

*Section 3* describes the object of the Act.

*Section 4* sets out the guiding principles which include but are not limited to ensuring Citizen Participation at each step of county law making and inclusivity in county decisions and operations affecting the population within the County.

*Section 5* establishes the Directorate of Citizen Participation.

*Section 6* requires the Directorate to establish committees that will co-opt members of the public from various sectors within the Directorate of Citizen Participation.

*Section 7* stipulates the requirements and qualifications of the members to be co-opted into the committees.

*Section 8* outlines the functions of the Directorate.

*Section 9* provides for the powers of the Directorate.

*Section 10* provides for the term of the members of the Committees of the Directorate.

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*Section 11* makes provision for the payment of allowances to members of the Directorate.

*Section 12* provides for the conditions and procedure for removal of members from the Directorate.

*Section 13* outlines the circumstances under which a person shall cease to be a member of the Directorate or committees.

*Section 14* provides for the manner in which the vacancies in the membership of the Directorate are to be filled.

*Section 15* makes provision for the appointment of the secretary to the Directorate.

*Section 16* deals with the manner in which the meetings of the Directorate and its committees will be conducted.

*Section 17* makes provision for the hiring of employees of the Directorate as may be necessary for the proper discharge of its functions under this Act.

*Section 18* exempts members of the Directorate and employees or officers from personal liability for matters undertaken in good faith in the execution of the functions, powers and duties of the Directorate.

*Section 19* makes provision for the manner in which general citizens' participation forums will be conducted.

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Section 20 establishes the Vihiga County Budget and Economic Forum.

Section 21 makes provision for other consultative forums as may be required by any law to address local issues in the County.

Section 22 makes provision for the manner in which sub-county, city and urban area citizen participation forums will be conducted.

Section 23 makes provision for the manner in which ward or village citizen participation forums will be conducted.

Section 24 requires the county government and its agencies to put in place affirmative action programs so as to ensure that minorities and marginalized groups within the county are not left out of decision-making and county activities.

Section 25 deals with the establishment of the County Communication Framework to facilitate dissemination of information to the public.

Section 26 provides for the manner in which the public shall be notified of the Citizens Participation Forums

Section 27 makes provision for the County Assembly meetings to be open to the public and prohibits the County Assembly from excluding the public and other media except in certain circumstances and for justifiable reasons.

Section 28 prescribes the manner in which petitions may be lodged with the County Government.

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Section 29 outlines the procedure for presenting the petitions under the Act.

Section 30 sets out the manner in which the petitions shall be considered by the County Government.

Section 31 prescribes the procedure for investigation of matters raised in a petition lodged with the County Government.

Section 32 provides for publication of the decision made by the Directorate concerning a particular petition.

Section 33 requires the county secretary to maintain a register of all petitions.

Section 34 sets out an appellate avenue to the Commission on Administrative Justice from a decision of the Directorate relating to a particular petition.

Section 35 allows the general public to forward a petition directly to the County Assembly in the alternative to the Directorate.

Section 36 indicates the sources of county funding to fund the activities of the Directorate of Citizen Participation.

Section 37 prescribes the financial year of the Directorate.

Section 38 requires the Directorate to prepare annual estimates of each financial year.

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**Section 39** enjoins the Directorate to keep proper books and records of account.

Section 40 deals with the opening and maintenance of bank accounts for the Directorate.

Section 41 introduces a performance management plan to be prepared by the Directorate.

**Section 42** allows the County Executive Committee to give directions to the Directorate on occasion.

Section 43 requires the Directorate to prepare an annual report at the end of each financial year.

Section 44 provides for the manner in which the Directorate shall publish and publicise information for access by the public.

Section 45 requires the Directorate to publicise the location of all the county government offices and contact details of the Directorate.

Section 46 outlines acts and omissions that constitute offences under the Act and prescribes penalties therefor.

Section 47 provides for a review mechanism of the decisions of the Directorate.

Section 48 provides for the promulgation of regulations under the Act.

### **Schedules –**

The First schedule provides for Citizen Participation guidelines.

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The Second Schedule provides for procedure in meetings of the Directorate; and

The third Schedule provides the Form of Petition to be used by citizens

The enactment of this Bill shall occasion additional expenditure of public funds, which shall be provided for in the estimates.

Dated-.....2018

**COUNTY EXECUTIVE COMMITTEE MEMBER, PUBLIC  
SERVICE AND ADMINISTRATION**