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INTERNAL MEMO

STANDING COMMITTEE ON FINANCE AND BUDGET

To: **Speaker of the Senate**

Thro': **Clerk of the Senate**

Thro': **Senior Deputy Clerk**

From: **Director, Committee Services**

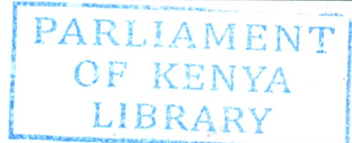
Date: **16th May, 2018**



*At Hon Speaker
You may approve for
tabling of
Hos/18
forwarded and recommended for approval
for tabling*

*EP
17/5/18*

**RE: REPORT ON THE THE COUNTY WARDS DEVELOPMENT
EQUALIZATION FUND BILL, 2018**



The above matter refers.

The Standing Committee on Finance and Budget has considered and adopted its report on the County Wards Development Equalization Fund Bill, 2018.

The purpose of this memo is to forward for your information, the Report and seek your approval for tabling of the said report to the Senate.

Njenga Njuguna.



*Approved
[Signature]
17/5/2018*

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11/22/11



REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

TWELFTH PARLIAMENT

*CS
Recommended for
approval for
tabling -
EJ 17/05/18*

*Rt. Hon. Speaker
You may approve
for tabling.
EJ
17/05/18*

REPORT OF THE STANDING COMMITTEE ON FINANCE AND BUDGET

ON

*Approved
EJ
17/05/18*

THE COUNTY WARDS DEVELOPMENT EQUALIZATION FUND BILL
(SENATE BILLS NO. 5 OF 2018)

CLERK CHAMBERS

THE SENATE

PARLIAMENT OF KENYA

NAIROBI

MAY 2018

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PREFACE

Mandate and Functions of the Committee

Article 124 of the Constitution of Kenya, provides for the establishment of Committees by either House of Parliament. Committees are central to the workings, roles and functions of Parliament as set out in Article 94 and more specifically in Article 96 of the Constitution as regards the Senate.

Parliamentary committees consider policy issues, scrutinize the workings and expenditure of the national and county governments and examine proposals for legislation. The roles of committees are twofold, investigative process and deliberative process. The end results of these processes are reports to the House in plenary on inquiry of certain issues under the mandate of a particular committee.

The Standing Committee on Finance and Budget is established pursuant to standing order 212(3) of the Senate Standing Order and is mandated –

- a) *To investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to examine –
 - i) the Budget Policy Statement presented to the Senate;
 - ii) report on the Budget allocated to Constitutional Commissions and independent offices;
 - iii) the Division of Revenue Bill, County Allocation of Revenue Bill, and cash disbursement schedule for county governments.*
- b) *To consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance and monetary policies and public debt, planning and development policy and*
- c) *To pursuant to Article 228 (6) of the Constitution, to examine the report of the Controller of Budget on the implementation of the budgets of county governments.*

Membership of the Committee

The Committee was constituted by the House on Thursday 14th December, 2017, during the First Session of the Twelfth (12th) Parliament. The Committee as currently constituted, comprises the following Members-

1. Sen. (Eng) Mohamed M. Mahamud, CBS,MP - Chairperson
2. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
3. Sen. Wetang'ula Moses Masika, EGH, MP - Member
4. Sen. Mutula Kilonzo Junior, MP - Member
5. Sen. Aaron Cheruiyot, MP - Member
6. Sen. (Dr.) Ali Abdullahi Ibrahim, CBS, MP - Member
7. Sen. (Dr) Rose Nyamunga, MP - Member
8. Sen. Boniface Mutinda Kabaka, MP - Member
9. Sen. CPA Farhiya Haji, MP - Member

Background and Executive Summary

The County Wards Development Equalisation Fund Bill (Senate Bills No. 5 of 2018) was sponsored by Sen. Irungu Kang'ata, and published on 7th March, 2018 and read a First Time on 29th March, 2018. Following the First Reading, the Bill, stood committed to the Standing Committee on Finance and Budget pursuant to standing order 134 (1) of Standing Orders of the Senate.

Subsequently, the Committee invited the public institutions to public hearings pursuant to Article 118 of the Constitution and standing order 134 (5). The Committee further invited submissions from members of the public on the Bills via advertisements on the newspapers.

The Committee received written submissions on the Bills and held a public hearing on 18th April, 2018 at the County Hall, First Floor, Mini Chambers, Nairobi, where oral submissions were received. The National Treasury, Commission on Revenue Allocation (CRA), Controller of Budget (COB), International Budget Partnership (IBP) and representatives of several county assemblies made several proposals for further amendments to the Bill.

The Committee thereafter, considered all the proposed amendments and made various observations and recommendations on the Bill.

Some of observations made were-

- a) The framework proposed in the Bill was parallel to financial framework provided for under the Constitution and the Public Finance Management (PFM) Act.
- b) The proposal in the bill were not aligned to promotion of equity
- c) There was overlap between the Bill and other already established county ward development fund mechanisms at county level.

Committee's Recommendations

The Committee recommends that the bill be approved with amendments such that-

- (a) the Bill will provide a framework for establishment of County Ward Development Funds as opposed to creating a uniform framework for all the forty-seven counties. This will ensure that the unique circumstances of each county are taken into account in the establishment of the Funds;
- (b) the Bill will be aligned with the financial and planning framework provided for under the Constitution, the Public Finance Management Act and the County Governments Act.

Acknowledgements

The Committee acknowledges the National Treasury, Commission on Revenue Allocation, Council of Governors, Controller of Budget, Institute of Certified Public Accountants (ICPAK), International Budget Partnership (IBP), County Assemblies and members of the public who made insightful contributions and recommendations to the Bill.

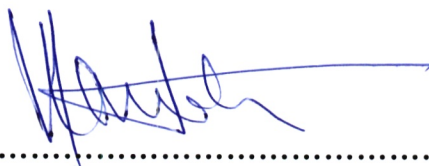
Further, the Committee thanks the Offices of the Speaker and Clerk of the Senate for the support extended to the Committee in execution of its mandate.

Appreciations to all Members of the Committee for their patience, sacrifice and commitment to public service, which enabled the Committee, complete the assigned task within the stipulated time.

This report is hereby submitted to the Senate for its consideration and adoption pursuant to standing order 207 (6).

It is now my pleasant duty and privilege, on behalf of the Standing Committee on Finance and Budget, to present to the Senate, this Report of the Committee on The County Wards Development Equalisation Fund Bill 2018.

SIGNED:



.....
SEN. (ENG) MOHAMED M. MAHAMUD, CBS, M.P.

(CHAIRPERSON, STANDING COMMITTEE ON FINANCE AND BUDGET)

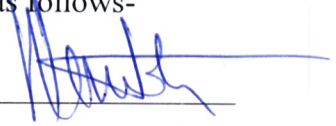
Date:

17th May 2018

ADOPTION OF REPORT

Pursuant to standing order 207 (2) of the Senate Standing Orders the Finance and Budget Committee considered the report on the County Wards Development Equalization Fund Bill (Senate Bills no. 5 of 2018) and adopted it as follows-

Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson



Sen. (Dr) Isaac Mwaura, CBS, MP

- Vice Chairperson

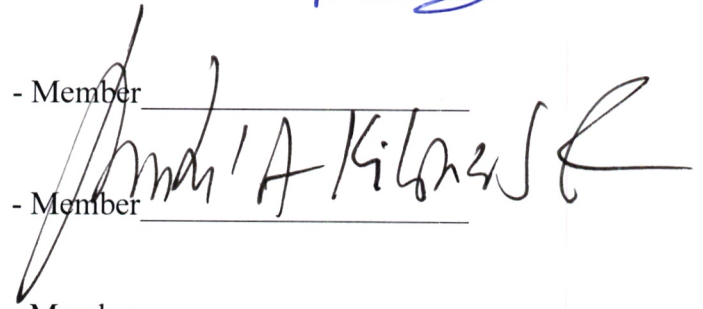


Sen. Wetang'ula Moses Masika, EGH, MP

- Member

Sen. Mutula Kilonzo Junior, MP

- Member



Sen. Aaron Cheruiyot, MP

- Member

Sen. (Dr.) Ali Abdullahi Ibrahim, CBS, MP

- Member

Sen. (Dr) Rose Nyamunga, MP

- Member

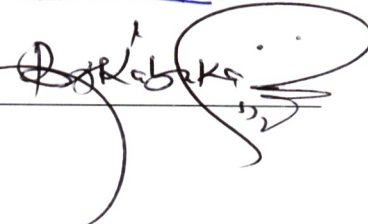
Sen. CPA Farhiya Haji, MP

- Member



Sen. Boniface Mutinda Kabaka, MP

- Member



CHAPTER ONE

INTRODUCTION

The County Wards Development Equalisation Fund Bill 2018 was sponsored by Sen. Irungu Kang'ata, and published on 7th March, 2018. It was read a First Time 29th April, 2018.

The principal object of the County Wards Development Bill was to provide for the establishment of a fund for promoting development in the Wards. The Bill further provided for the setting up of an institutional framework for coordinating development initiatives and projects in the Wards.

The Bill principally seeks to promote the decentralization of development within the counties by identifying projects that are beneficial to the residents of the respective wards and the county generally and providing a framework for the implementation of such projects.

The Bill is premised on Article 174 of the Constitution which sets out the objects of devolution, among them being –

- (a) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
- (b) to recognize the right of communities to manage their own affairs and to further their development;
- (c) to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya by decentralizing the provision of services pursuant to Article 176(2) of the Constitution; and
- (d) to ensure equitable sharing of national and local resources throughout Kenya.

The objects and purposes of the Bill are therefore to —

- (a) provide for the equitable development in each ward;
- (b) provide a mechanism for the identification of priority projects in each ward;
- (c) promote the decentralisation of functions and provision of services by

county governments to the extent that it is efficient and practicable pursuant to Article 176 of the Constitution;

- (d) to ensure equitable sharing of resources within the county;
- (e) provide a mechanism through which the county governments are able to promote the interests of marginalized communities within the respective wards in accordance with Article 43 of the Constitution; and
- (f) provide a framework for the participation of residents in each county with respect to the application resources and the identification and implementation of projects through monies obtained from the resources allocated.

The bill seeks to-

- (a) Establish The County Ward Development Fund which shall consist of at least eight percent (8%) of the revenue allocated to the respective county government in each financial year and such other monies that may accrue to the Board in managing the Fund
- (b) Promote equalization by equal allocation of funds amongst the Wards, which shall be done by the respective county executive committee member with the approval of the respective county assembly.
- (c) Establish county ward development boards to administer the Fund established in the respective counties.
- (d) Establishes a Project Proposal and Implementation Committee in each ward to ensure efficient management and administer the funds allocated to the ward
- (e) provide for the implementation of projects by the committee with regard to procurement of services and works, record of receipts and disbursement, project funding and avoidance of duplication of projects
- (f) provide an oversight mechanism through the county assembly to ensure that all entities proposed to be established under the Bill conduct their affairs in an effective manner and that any funds so disbursed are properly utilized

- (g) provide for the nature of the projects to be funded which shall –
- i) only be in respect of works and services falling within the functions of the county government under the Fourth Schedule to the Constitution; and
 - ii) community based in order to ensure that the benefits are available to a widespread cross-section of the inhabitants of a particular area.
- (h) Provide for disbursements from the Fund, for the opening and maintenance of a bank account for which all funds allocated to a particular ward shall be deposited.

CHAPTER TWO

SUBMISSIONS FROM STAKEHOLDERS DURING PUBLIC HEARINGS

2.1 Commission on Revenue Allocation

The Commission on Revenue allocation made submission as follows-

- a) The bill sought to cure wards marginalisation within the counties and also ensure implementation of development projects.
- b) The 8% provided in the bill may not be feasible for urban counties which had failed to adhere to section 107 of PFM Act on minimum 30% of development expenditure.
- c) Considering the Division of Revenue Act 2018, 8% would translate to Ksh. 25 billion.
- d) Sharing the fund equally among the wards in a county would result to further marginalisation; since considering per capita the range would be between Ksh. 170 to Ksh. 27,000. That would not translate to equitable sharing as envisioned in Article 203 (1)(g) of the constitution.
- e) The bill was not specific on the sectors that would be funded by the proposed fund; that may result in duplication of service delivery in one sector while denying servicing of other sectors.
- f) The alternative to the bill would be-
 - i) Minimise the fund structure
 - ii) Specify the projects
 - iii) Delete clause 14(2)(c); it's risky for the county public finance management
- g) There was lack of consistency in the bill: some sub heading omitted the word 'equalisation.'
- h) The bill did not consider section 116 of PFM Act requirements on setting up public funds that would address areas of development which were not in the county budget.
- i) Amend:

- i) Clause 4 and substitute with guiding principles in Article 174 (a-g) in the constitution.
- ii) clause 8(1) to replace equally with equitably
- iii) clause 17(c), 22 and 32(1) to allow the composition of the board and its secretariat be officers who are employed by the county governments including ward administrator to reduce administrative costs like salaries and wages.
- iv) Clause 43 to align it with requirements provided in PFM Act.
- j) Section 116(12) of PFM provides that county public fund administrator should be designated by the CECM in charge of finance; thus, clause 17(d) should be deleted.
- k) Delete clauses: 14(2), 16, 21(1), 23, 26(1), 28(3&4) and 38.

2.2 National Treasury

The representatives from National Treasury made submissions as follows-

- a) The bill contradicted the provisions of the Article 201(4)(b) of the Constitution and section 116(1) of the PFM Act on the powers and responsibilities to establish county public funds.
- b) The bill claws back the fiscal powers of the county governments to plan, budget, spend and report as provided in Article 201 and 203.
- c) The bill tends to water down the development planning framework established under PFM Act and section 108 of the County Government Act.
- d) The bill proposed to spread resources of the county governments thinly across the county wards thus reducing the capacity of the county governments to finance priority large scale projects which may transcend more than one ward and with higher socio-economic impact.
- e) Clause 8 of the bill contravenes Article 201(b) which requires public finance system to promote an equitable society.
- f) The bill may lead to duplication of effort and double allocation of funds thus, leading to wasteful spending of public funds.

- g) There was no evidence on how the bill met the criteria for establishing a county public fund; a rationalisation on how the activities to be financed by the fund could not be funded through the normal budgetary process.
- h) The bill gives the board the powers to borrow without making reference to the Constitution and PFM Act provisions on borrowing by the county governments.
- i) The bill offended several provisions of existing legislations, thus, it should be withdrawn.
- j) The alternative of the bill would be to develop a master plan that anchors all development initiatives meant to address inequalities. That would guide planning, budgeting and implementation.

2.3 Office of Controller of Budget

The Office of the Controller of Budget mad submissions as follows-

- a) The bill tends to contravene some sections of the Public Finance Management Act, 2012.
- b) Clause 5(2)(a) negates the spirit contemplated in PFM Act section 126 in which county governments were expected to formulate annual development plans with approval of county Assemblies. During identification of programmes the members of the public are consulted; further, activities related to the programme and costing is the role of county government.
- c) The bill did not take into account the existing budgeting structures as well as provide how the proposed structure will relate with the county governments' sectors.
- d) Section 104 of the County government Act, 2012 provided that planning must be done before appropriation. The bill proposed allocation of funds, then identify the projects to be implemented.
- e) Clause 5(3) its reinforcement may be difficult since the CoB role is normally at the tail end of the budgeting process. County Assemblies were the organs vested with powers to reinforce implementation of the Act.

- f) Clause 14 and 28 – creation of the boards and project implementation Committees is an adverse to the economy whose wage bill is far above the international acceptable standards about 7% of GDP.
- g) Clause 21 proposed establishment of fund; section 116 of PFM Act gives that power to the County Executive Committee Member in charge of finance to establish public funds and designate an officer to administer. The bill proposed the fund administrator to be recruited by the County Public Service Board.
- h) The structure in the bill failed to embrace the principles of public finance like prudence and economic use of public resources since the structure would lead to duplication and wastage of resources.
- i) The bill also proposed another level of public participation in budget process: that may lead to fatigue and cause lethargic to the members of the public.
- j) Clause 36 was contradicting the budget making process as provided in section 126 of the PFM which required submission by 1st September.

It was recommended that since the bill appeared to undermine the role of county Assembly in budget making process-

- the ward based project should be integrated in the county budget; and
- adopt the existing structures in identification of programmes, costing of activities and implementation.

Further, she remarked that for counties which had not established structures as envisioned in the law, the Senate should enforce establishment and operationalization of such decentralized structures.

She hinted that some assemblies had enacted ward development laws but they were inconsistent with existing laws.

The office issued two circular

- 2014 circular highlighted procedures of establishing development funds with view of actualizing Article 176.
- 2018 circular highlighted conditions and procedure to follow in establishing the development Funds.

2.4 International Budget Partnership

The International Budget Partnership made submission as follows-

- a) The bill did not create a link with existing ward/ equitable development laws in some counties.
- b) The proposed fund skewed counties' development budget toward single-ward projects and reduced their ability to budget for countywide flagship projects in CIDPs.
- c) The criteria proposed to allocate funds towards did not promote equity.
- d) Clause 5(2)(a) was not clear on which share of revenue was referred.
- e) Further, they indicated that-
 - i) The bill advanced inequality instead of equity in which people with different needs and capabilities should be treated differently.
 - ii) The intra-county inequalities would remain wider even within richer and poorer counties.
 - iii) The bill should consider responding to the inequalities in poverty and access to services.
 - iv) The basis of allocating 8% was not justifiable.
 - v) Some counties were at different levels of capital development and it was not fair to make them commit similar percentages in their budgets to allow other/ new projects.
 - vi) The bill does not provide the link to its proposed structure with the CIDP and other county plans
 - vii) Despite the flows, the existing mechanisms in counties were more equitable than the proposed approach.
- f) The main tenet of devolution was to enhance the principles of subsidiarity and fiscal accountability. The bill appeared to negate the principles. It was not feasible to create national law that dictates how each county allocates its resources.
- g) The operationalisation of the act would increase the wage bill thus shrinking the resources meant for development.

- h) The law should provide a framework for equitable distribution of resources within counties which would consider different measures of need across the wards and villages.

2.5 Murang'a County Assembly

Representatives from Murang'a County Assembly made submission as follows-

- a) The Assembly was in support of the bill; for it was meant to cure mischief by the county executive where they implement projects in wards regarded to be in support of the executive.
- b) Clause 8 should be amended such that the funds would be shared equitably since different wards were not at the same level
- c) Clause 32 should be amended to allow county assemblies approve the project coordinator.
- d) Clause 46(2) should be amended to include independent Members of county assembly.

2.6 Uasin Gishu County Assembly

Representatives from Uasin Gishu County Assembly made submission as follows-

- a) The Assembly was in support of the bill.
- b) County assemblies were bound by PFM regulations which allowed them to only amend budgets to a maximum of 1% per vote; that was hindrance to budgeting process.
- c) Amend clause 5(2) –to replace 8% with 15%.
- d) Clause 28(2) does not allow participation of the area MCA in nomination of project proposal and implementation Committee. Amend to read two persons female and male nominated by the County Assembly Service Board (CASB) per ward.
- e) Amend clause 28(10) for quorum to be a ratio. Proposed half of the membership.

2.7 Kakamega County Assembly

Representatives from Kakamega County Assembly made submission as follows-

- a) The Assembly was supporting the bill since it would promote equal development the wards.
- b) Amend the bill such that the share would be a percentage between 15 and 20.
- c) Amend to allow involvement of MCA in constitution of the Board; CASB should nominate 2 representatives.

2.8 Nairobi City County Assembly

Representatives from Nairobi City County Assembly made submission as follows-

- a) The Assembly was in support of the bill
- b) Nairobi City County executive did not adhere to the requirement of 30% development expenditure.
- c) The proposed 8% would help cure the problem of underfunding of development projects.
- d) Amend the bill to have an additional clause such that there would be a committee of the Senate that oversees the implementation of the Act.

2.9 Council of Governors (COG)

Through a memorandum, COG indicated that the bill was unconstitutional and was not in the interest of the county governments and should not be passed by parliament.

However, the following amendments were proposed-

- a) In the title delete the word 'equalisation' since constitution in Article 204 equalisation fund was provided.
- b) The objectives should be deleted or reviewed since what they are meant to achieve has been accomplished based on the equitable formula approved by the Senate. The proposal may lead to uncoordinated and ineffective service delivery processes.
- c) Clause 5 was unconstitutional since providing, through legislation, the reallocation of counties' funds especially on jurisdictions that fall within the county governments.

- d) Establishing a fund that sought to further reallocate the county resources as mandatory obligation would be unconstitutional since developments in counties were done by county executive as approved by the county assemblies.
- e) Delete clause 6 since county projects are done through the county projects framework and funds should be administered through the county treasury.
- f) Amend clause 7(1&2) to read ‘maintained an operational bank account’; further of which the accounting officer of the county treasury should be a member.
- g) Amend clause 8
 - i) (1) by replacing the word ‘equally’ with the word ‘equitably’ since the act would provide equitable sharing of resources.
 - ii) (4) to read reallocated instead of allocated.
 - iii) (5) replace the words ‘a return’ with the words ‘a refund statement.’
- h) Delete clause 10. Austerity measure and principles of PFM would require that the fund be administered by county treasury. That would have extra administrative expenses, and help avoid duplication.
- i) Amend clause 13 to provide that unutilized funds shall be refunded to fund account for reallocation.
- j) Amend clause 17 for clarity since existing structure does not provide for any position of chief executive officer.
- k) Amend clause 18(3) to clarify that it is CECM in charge of finance.
- l) Delete clause 23, 24 and 25. This is in endeavour not to increase the wage bill, duplicate county executive efforts in implementation of projects and challenge of operating challenges posed by operating several bank accounts such as adherence to fiscal responsibility principles as provided in section 107 of PFM Act.
- m) Amend clause 45 to read that the respective county government shall ensure that no duplication of projects occur.
- n) Delete clause 46; there exist structures that oversee implementation of county projects.

2.10 Machakos County Assembly

Through a memorandum, the assembly indicated as follows-

- a) There was need to define Executive Committee member in clause 8 and assembly.
- b) Amend clause 3(f) to further provide for a framework of accountability on the projects implemented under the fund.
- c) Amend clause 5(2)(a) to clarify which share of revenue.
- d) Amend clauses 6(c), 7, 13 and 25 to align with national treasury policy on opening and maintaining bank accounts.
- e) Amend clause 8(1) by replacing equally with equity since different wards have different level of development based on infrastructure and other services.
- f) Amend to provide the criteria for equitable sharing which may include: fiscal capacity & efficiency, developmental needs, economic disparities, affirmative action, economic optimization, desirability of stable & predictable allocations of revenue, flexibility to respond to emergencies and prioritized use of funds.
- g) Amend clause 8(2) to provide reallocation of funds allocated to a project may only be done by the board with approval by the county assembly.
- h) Amend to align clause 9 with section 136 of PFM Act.
- i) Align clause 10 and clause 23 on administrative costs.
- j) Amend clause 11 by adding a sub clause that board shall make quarterly reports on the status of their books of accounts.
- k) Amend clause 17(3) for the chair to be recruited by the county public service board.
- l) Amend clause 17 to align it with requirements in State Corporations Act.
- m) Amend clause 20(4) for county public service board to determine the number secretariat staff.
- n) Amend clause 32(4) for county assembly to approve appointments of project coordinator.
- o) Amend clause 35 such to ensure principles of public participation will be adhered to during identification and submission of project proposals.

2.11 Nairobi City County Executive

Through a memorandum, the Nairobi City County Executive indicated as follows-

There was a Nairobi City County Wards Development Fund Act which ensured that a specific portion of the county annual budget was devoted to the purposes of development and in particular the fight against poverty at the ward level.

- a) Amend clause 2 by using standard definition of community, County Executive Committee Member and County Management Committee.
- b) Amend clause 5(2) to clarify which share of revenue.
- c) Amend to replace
 - i) 'board' with 'county management Committee'
 - ii) 'fund manager' with 'officer administering the fund'
- d) Amend clause 7 to assign the role of opening and maintaining the accounts
- e) Amend clause 8 because wards have different needs and peculiarities.
- f) Amend clause 12: the auditor general should submit the report to respective county assembly.
- g) Delete clause 13 it would not be necessary to open various accounts in the wards.
- h) Amend clause 20(6) such as to refer to the correct clause.
- i) Amend clause 25(1) as it contradicts section 116 of the PFM Act.
- j) Amend by deleting clause 47(1)(d) as it would not be the intention of the board to impose restrictions on the ward account.
- k) Amend clause 52(1 &3) to allow CECM for finance to make regulations with the advice of the board.

2.12 The Institute of Certified Public Accountants of Kenya (ICPAK)

The Institute through a memorandum made submissions that the initiative was welcome since it advocated for decentralize development. Other submission were as follows-

- a) Amend such as to avoid issues around duplicity of functions with other funding initiatives already set through other funding mechanisms.
- b) Another issue of consideration was addressing the perceived conflict that has defined the participation by elected officials in management of funds.

- c) Amend to avoid duplicity and overlap in the responsibilities: integrate the prioritized projects/ activities under the bill with the County Integrated Development Plans (CIDPs).
- d) Amend the title by deleting the word ‘equalization.’
- e) Amend part III on establishment of the board as it may dangerous where they may bypass already established structures: consider using the existing county government structures in administering the fund.
- f) Amend clause 8(4) to read ‘unspent funds shall be allocated to any eligible capital project may be new or ongoing at the end of the financial year.’
- g) Amend clause 17(1) to provide clarity in cases where county government assigned different CECM to handle matters related to county economic policy and planning.
- h) Amend clause 21 to make it mandatory for the fund manager to belong to professional body like ICPAK.
- i) Amend clause 35 to provide that each project shall be implemented by specific committee.
- j) Delete clause 52(4) since regulations were important in providing details of implementation of any law.

2.13 The Institute for Social Accountability

Through a memorandum, the Institute made submissions that the bill should be withdrawn since it was unconstitutional on several grounds as follows-

- a) The bill usurps county functional mandates

Article 174 charges county governments with responsibility of decentralization and public participation.

- b) The bill usurps county budget making mandates

The constitution assigns county governments the fiscal powers to be exercised through the county budget process which is guided by principles which include inclusivity and equity.

The constitution creates equalization grant to address historical inequalities.

The proposals in the bill limited the discretionary budget powers of the county governments and thus undermined the independence of county governments.

The bill further sought to mask national governments failure to provide a balanced framework for fiscal intergovernmental relations through the division of revenue process.

c) The bill proposed a structure that breeches separation of powers

It contradicts the principle of separation of powers (Article 175) by giving the county assembly the role of approving projects.

d) The bill contradicts existing legislation/ regulation (philosophical disconnect)

The philosophy of the bill is disconnected from the devolution architecture created under the existing devolution laws. The bill offends the County Government Act and Public Finance Management Act which provided for the establishment of county funds, county boards, and express purpose of avoiding duplication, wastage and safeguarding integrated development planning.

2.14 Nyandarua Residents Association

Through a memorandum, the association indicated as follows-

- a) They supported the bill since it was in line with Article 174(d) of the constitution which express that devolution as a means of recognizing the right of communities to manage their own affairs and to further their development.
- b) The bill should make public participation a mandatory to help deter corrupt agents and cartels in the devolved governemnts.

2.15 Members of Public

2.15.1 Hon. Charles Mwangi Kirigwi

He made submission as follows-

- a) He supported the bill.
- b) Amend:
 - i) Clause 12(2) to include respective county assembly
 - ii) Clause 13 (1-10) should be aligned on the understanding that its only one county office that deals with issues of fund disbursements and implementation.
- c) Clause 17(2) to allow the governor appoint the chairperson of the board

- d) Clause 21 to provide that county project coordinator shall deputise the county fund manager and shall be in rank similar to county chief officer
- e) Clause 25
 - i) to allow board to open and maintain development account instead of a committee to avoid haphazard transactions that may lead to abuse.
 - ii) (2&3) should be merged so as to provide that signatories to the account shall be county fund manager and two other signatories as directed by the board.
 - iii) (4-9) should be aligned with other provisions in the bill: should be county ward development fund account and /or ward book account
- f) Amend clause 28(14) to limit maximum sittings to twelve in a financial year.
- g) Align clause 32(1-4) with clause 21.
- h) Introduce a new sub-clause 46(5)(f) adding a new role of county assembly such as to consider and report to the county assembly matters relating to section 31 of the act
- i) Amend clause 52(3) to restrict making regulations to boards with consultation with the committees.

2.15.2 Mr. Joseph Mungai

He made submission as follows-

- a) He supports the bill especially because it advocated for extensive public participation.
- b) The bill proposed an impartial development process, decentralised development throughout the county and strong administrative structures that would oversee the management of the funds.
- c) The Bill enhanced the functional independence of county assemblies especially in executing their oversight roles on the county leadership
- d) The bill should be amended to provide that allocation for the wards should be determined by the population and revenues collected from the ward.
- e) Funds budget for development projects should not be diverted to other projects through supplementary budgets.

CHAPTER THREE

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

Observations

Having considered the Bill and the submissions on the Bill by various stakeholders, the Committee made the following key observations that touch on the overall structure of the Bill-

(1) The framework proposed in the Bill vis-à-vis financial framework provided for under the Constitution and the Public Finance Management (PFM) Act

- a) The Committee observed that a number of stakeholders, in their submissions, were of the view that the Bill, offends provisions of the Constitution and the PFM Act on the powers and responsibilities to establish county public funds. The stakeholders' contentions in this regard were that the power to establish county funds is an exclusive mandate of the county executive committee member for Finance.
- b) The Committee noted that indeed the Constitution and the PFM Act provide for the effective management of public finances by the national and county governments, the oversight responsibility of Parliament and county assemblies and the different responsibilities of government entities and other bodies in public finance management.
- c) However, the Committee noted that the establishment of the Fund under the Bill was within the mandate of the Parliament pursuant the Article 207(2)(a) which provides that -

'207(2) Money may be withdrawn from the revenue fund of a county government only –

(a) as a charge against the revenue fund that is provided for by an Act of Parliament or by legislation of the county.'
- d) Parliament therefore has the power to establish funds to which money from the County Revenue Fund may be paid.

- e) The Committee further observed that it would be important for the Bill to be harmonized with the PFM Act with regard to the administration and the management of the Fund so as to comply with Article 226 of the Constitution which provides for the keeping of financial records, designation of accounting officers and auditing of county accounts.
- f) On this, section 110 of the PFM Act bestows the power to manage finances at the county level to the County Treasury. Indeed, the PFM states that the County Executive Committee Member-Finance shall be charged with maintaining proper accounts and other records in respect of the County Revenue Fund, the County Emergencies Fund and other public funds administered by the county government.

(2) Promotion of equity

- a) The Committee observed that the Bill has been proposed so as to promote equalisation across the wards in every county. This is in light of the fact that development at the county level has been skewed in favour of some wards and to the detriment of others.
- b) However, the Committee noted that the following fundamental issues arise in respect of the “equalisation” approach provided for in the Bill-
- ✓ The Bill treats unequal counties equally
 - ✓ Intra-county inequalities remain wide even within richer and poorer counties and it is therefore hard to justify both wards receiving the same level of funds from an equalization fund e.g. as submitted by the International Budget Partnership, within Nairobi County, Lower Lindi ward has 23 times the number of poor people as compared with lower Savanna Ward while in Turkana County, Turkwel Ward has 6 times the number of poor people as compared with Lobokat Ward.
 - ✓ As submitted by the International Budget Partnership, allocating 8% of the equitable share of revenue will have different effects across counties. Smaller counties such as Taita Taveta, Tharaka Nithi, Vihiga nad Lamu will have a

larger percentage of their equitable share taken up by the Fund e.g. 8% of the equitable share for Taita Taveta County would constitute 70% of its 2016/17 development expenditure, while in Makeni County, it would constitute 13% of the 2016/17 development expenditure

- ✓ Counties are at different levels of capital development and it may not be appropriate to make them commit similar percentages from their budgets
 - ✓ There was no clear basis for allocating 8% of the revenue allocated to the counties.
- c) In this regard, the Committee observed that there would be need for the Bill to take into account the differences across counties and wards in the country so as to achieve the objectives of the Bill.

(3) Overlap between the Bill and other ward fund mechanisms at the county level

- a) Various stakeholders submitted to the Committee that some counties already have ward development laws in place to ensure there is equitable distribution of resources among wards e.g. Elgeyo Marakwet, West Pokot and Meru have similar laws.
- b) The mechanisms provided in these laws differ across counties. Some counties provide for a specific amount to be allocated to the fund while in others, a lower percentage, such as the 5% provided for in Nairobi, is provided for.
- c) In light of these existing frameworks, the Committee was of the view that it would be important for the national law to take cognizance of these mechanisms and not to unduly disturb them. The Committee was therefore of the view that a national framework law may be appropriate to enable counties to customise the funds to their unique circumstances.

Recommendation

In view of the foregoing observations, the Committee recommends that the Senate approves the Bill and that the structure of the Bill be revised as follows-

- (c) the Bill to provide a framework for establishment of County Ward Development Funds as opposed to creating a uniform framework for all the forty-seven counties. This will ensure that the unique circumstances of each county are taken into account in the establishment of the Funds;
- (d) the Commission on Revenue Allocation be mandated to determine a mechanism for equitable sharing of the Fund across the Wards within a county. This will promote equitable development across the counties and ultimately achieve equalisation across the wards in every county; and
- (e) the Bill be aligned with the financial and planning framework provided for under the Constitution, the Public Finance Management Act and the County Governments Act.

APPENDICES

- (a) Minutes of the Committee sittings on the Bill**
- (b) Submission by ICPAK**
- (c) Submission by the International Budget Partnership**
- (d) Submission by National Treasury**
- (e) Submission by office of Controller of Budget**
- (f) Submission by Council of Governors**
- (g) Submission by Nairobi City County Executive**
- (h) Submission by Nyandarua Residents Association**
- (i) Submission by Commission on Revenue Allocation**
- (j) Individual Members of Public**

NYANDARUA RESIDENTS ASSOCIATION
P.O BOX 208-20319 SOUTH KINANGOP
EMAIL: nansag14@gmail.com
Tel: 0724477432 / 0723934195

17/04/2018

Chairman,
Senate committee on devolution
County hall
Nairobi

Dear Sir,

REF: PUBLIC PARTICIPATION IN FUND TRANSFER TO THE WARDS
BILL.

This Association is a Community based Organisation founded in the year 2005 with oversight role on public funded projects as one of its objects. We have been undertaking this role in Nyandarua County since 2005 when we were registered. It is for the purpose of the above bill that we wish to make our input.

This we consider to be a positive step towards realizing the goal stipulated in Chapter Eleven Part 1, “objects and principals of devolved government.” And particularly in line with the objects of devolution article 174 (d) that pits devolution as a means of “recognizing the right of communities to manage their own affairs and to further their development.”

The new Bill is a new move to activate communities in furthering their development which is the best way of the making of an economically vibrant society. It will increase opportunities that make citizens own their development.

Citizens will appreciate development that is brought to them by the two levels of government if they are allowed to have show cases of their own initiative.

We are therefore optimistic that the new Bill if passed will help avail funds that will active public concern in development because they will be able to identify and implement priority development projects in their areas.

MANAGEMENT OF THE FUND.

It is important to consider the experiences we have gained from the former Constituency Development Fund (C.D.F.) where Mps had taken greater personal control of the fund raising question of the separation of powers (article 174 (i) of the constitution).

Separation of power conflict in management of C.D.F have raised legal issues which necessitated amendment of C.D.F Act to address them. The recommended Ward Fund should clearly avoid separation of power conflict by creating management committees similar to the Management Board as are in place is the Management of Free Education Fund. We do not want a situation where the fund will be challenged in court.

The most important role senators are expected to play in devolution is to make sure that the county governments are smoothly run to the satisfaction of the citizens. Citizens are also major players in devolution as is given in section 87 and 91 of the County Government's Act of 2012 and Article 201 (a) of the Constitution.

CORRUPTION AND WASTAGE IN COUNTIES

In the first five years of devolution we noted that corruption and wastage of resources in County Governments was rampant. Reports from the Auditor General have confirmed this and at times such reports have been astonishing.

Corruption and wastage according to our findings as an Association are attributable to lack of adequate Public Participation as is recommended in the County Government Act of 2012 and the Constitution. The Senate has in the past severally raised major concern on corruption and wastage in the Counties.

As we begin the second five year term of devolution, the Senate should strongly embark on strengthening public participation in the management of finances in County Governments which will be in line with Article 201 (2) of the Constitution. This requires legislation or regulations to make public participation mandatory.

During the days of County Councils, the National Government was giving additional funds for development to the Counties through the Local Authority Transfer Fund (LATF). During that time public participation was mandatory in that after a project was identified, stakeholders or project beneficiaries would be invited where details of the project, cost, BQ and contractors would be given.

The stakeholders would then raise a Project Management Committee and raise two Consensus Members to coordinate with the County Council Officials in charge of the project. The Project Management Committee would then monitor the implementation and when completed stakeholders would be invited to inspect the project. If satisfied the Consensus Members would sign Completion Certificate in front of the stakeholders and it was only then the Contractor would be paid his money.

Today County Governments have been paying Contractors even before they have completed the job and even without informing the Stakeholders. This is the source of massive corruption and wastage witnessed in the County Governments during the first five years of devolution.

We by a copy of this letter request the Senate to make sure that Public Participation in County Governments is made mandatory and this will offer deterrence to corrupt agents and cartels in the devolved governments. This will be through upholding principals of public participation in Counties as it is stipulated in Part VIII of the County Government Act of 2012 through enactment of legislations which will make public participation mandatory.

In conclusion we totally support the **Ward Fund Transfer Bill**.

Yours faithfully



James Githinji Mbugua

Chairman,

Nyandarua Residents Association.

REPUBLIC OF KENYA



OFFICE OF THE CONTROLLER OF BUDGET

Representations on County Ward Development equalization Bill

Presented to the Senate Standing Committee on Finance, Commerce and Budget.

April 18th, 2018

1. General Observation

The County Wards Development Equalization Bill, 2018 is modelled along the National Government Constituencies Development Fund Act, 2015. Its objective is to establish structures for promoting development in the Wards. It sets up an institutional framework for coordinating initiatives and projects in the Wards. It establishes the County Ward Development Board at the county level and project identification and implementation committees in each Ward. The Bill seeks to establish an institutional framework outside the one established in the County Government Act, 2012.

2. Comments on specific clauses

Pg/Clause	Provision	Observations and Recommendations
Page 60 - cls.5(2)(a)	The Fund shall comprise of at least eight percent of the share of revenue allocated to the respective county government for the respective year.	<p>Section 12 of the Public Finance Management Act, 2012 requires that county governments should have adopted programme based budgeting in the 2014/15 financial year.</p> <p>Section 126 of the Public Finance Management Act, 2012, requires that county governments should prepare Annual Development Plans in accordance with Article 220(2) of the Constitution. The ADP should include at 126(1)(c) —</p> <p style="text-align: center;">programmes to be delivered with details for each programme of—</p> <p style="text-align: center;">the strategic priorities to which the programme will contribute;</p> <p style="text-align: center;">the services or goods to be provided;</p>

Pg/Clause	Provision	Observations and Recommendations
		<p style="text-align: center;">measurable indicators of performance where feasible; and</p> <p style="text-align: center;">the budget allocated to the programme;</p> <p>Under this provision the county is supposed to first identify a programme and the activities under the particular programme then the costing of the activities follows. Under the Bill the amount is predetermined and activities follow.</p> <p>The County Assembly approves the Annual Development Plan.</p> <p>There is no requirement for the Fund to adopt Programme Based Budgeting.</p> <p>If the Fund is retained, there should be a defined structure on how it should relate with respective sectors long before the deadline for submission of the ADP to the county assembly.</p> <p>This will ensure that , before finalization of the ADP, it is clear which activities will be undertaken under a particular programme</p>

Pg/Clause	Provision	Observations and Recommendations
		<p>This will also ensure that the activities are catered for in the planning documents because under Section 104 of the County Governments Act 2012,</p> <p><i>.....no public funds shall be appropriated outside a planning framework developed by the county executive committee and approved by the county assembly.</i></p>
Page 60 - cls.5(3)	The Controller of Budget shall not authorize withdrawal of monies under Article 207 of the Constitution where a county fails to comply with the provisions of this Act.	<p>The Bill aims to ensure that there is equitable development within the county and requires the Controller of Budget to enforce the requirement that at least 8% of the annual budget shall be allocated to the proposed Fund.</p> <p>Whereas it is possible for the Controller of Budget to enforce this requirement, the Controller of Budget comes at the tail end after the budget is already approved.</p> <p>Budget making is a process and the process is prescribed in Section 125 of the Public Finance Management Act, 2012. The county assembly's approval is required at various stages of this process.</p> <p>The County Assembly has necessary powers to ensure the objective of the Bill is achieved.</p> <p>The Bill could make it a condition that for the</p>

Pg/Clause	Provision	Observations and Recommendations
		<p>County Assembly to approve any budget presented to it, the County Executive should be able to indicate the projects they intend to implement in each ward that financial year.</p> <p>If the issue of equitable distribution is addressed in the Annual Development Plan and the Approved Budget Estimates, the need for a Fund will not be necessary.</p> <p>This will make it easy for the County Assembly to exercise its oversight role.</p>
<p>Page 63 & 69 -</p> <p>cls.14& cls. 28</p>	<p>Clause 14. Establishes the County Ward Development Board which is an autonomous body corporate with perpetual succession.</p> <p>The Board shall comprise of two (2) public officers, three (3) other members competitively recruited and a fund manager also competitively recruited.</p> <p>Clause 28 establishes a Project Proposal and Implementation Committee for each ward.</p> <p>The Committee shall comprise of one (1) county public officer responsible for coordination at the ward level and four (4) other persons recommended by the County</p>	<p>Both the national and county governments are grappling with a high wage Bill resulting from a bloated workforce.</p> <p>The Bill proposes recruitment of an additional four (4) officers at the county level and another four (4) for each ward. Depending on the number of wards in a particular county, the number of additional officers in a county could exceed three hundred (300).</p> <p>This contravenes the principles of prudent use of public resources as enshrined in Article 201(d) of the Constitution, it also does not assist the county governments tame the spiraling wage bill.</p>

Pg/Clause	Provision	Observations and Recommendations
	Public Service Board to the County Assembly for appointment.	All efforts should be made to make use of the already existing structures to avoid escalation of the wage bill as opposed to creating additional structures which will require additional funds to run.
Page 66 cls.21	This Clause provides for the qualifications, and appointment of a Fund manager. The manager shall be recruited competitively by the County Public Service Board but the approval of the County Assembly must be obtained.	<p>Section 116 of the Public Finance Management Act, 2012 has provisions relating to establishment and management of county public funds.</p> <p>It provides that for every Fund established the County Executive Committee Member responsible for finance shall designate an officer administering the Fund. The Bill seems to take away this function from the CECM responsible for finance.</p> <p>The Section also prescribes statutory responsibilities of the officer administering the fund which are not reflected in the Bill.</p> <p>Although the proposed Fund is being established by national legislation, for each county it will be a county public fund therefore the provisions of Section 116 of the Public Finance Management Act, 2012 apply. The responsibilities of the CECM Finance and the statutory responsibilities of the administrator should be incorporated.</p>
Page 67	The Clause provides that the projects to be	This provision is broad and general and may

Pg/Clause	Provision	Observations and Recommendations
cls.24	<p>funded are those that fall within the functions of the county government under the Fourth Schedule of the Constitution.</p> <p>Further that they should be community based to ensure that benefits are available to a widespread cross section of the inhabitants of that area.</p>	<p>result in turf wars between the respective departments and the Fund on what projects should be undertaken by whom.</p> <p>To avoid such conflicts, Regulation 197 of the Public Finance Management (County Government) Regulations, 2015 prescribes conditions to be met before establishing a county public fund. The conditions include inter alia, that the County Executive Committee Member responsible for the county government entity:</p> <ul style="list-style-type: none"> (a) shall certify in writing that the functions and the public services to be delivered through the Fund cannot be delivered through the structure of budget appropriations; (b) provide a clear justification as to why a Fund structure is deemed appropriate for improved service delivery in light of the legislative and policy mandate of the county government entity; (c) the County Executive Committee Member responsible for the county government entity functions shall confirm in writing that the establishment of the Fund and its continued existence will not depend on annual financing from the county exchequer; <p>Under the Bill the Fund can undertake any activity including those that can be implemented</p>

Pg/Clause	Provision	Observations and Recommendations
		<p>through the normal budget appropriation. It amounts to establishing two structures to undertake an activity that can be undertaken by one structure.</p> <p>This does not support the principle of prudent and economic use of public resources as provided in Article 201 of the Constitution.</p>
Page 70 cls.29	<p>The Clause establishes a Project Implementation Committee whose functions include:</p> <ul style="list-style-type: none"> (a) identification of projects to be funded under the Act; (b) undertaking public participation in identifying the projects; (c) submitting ward projects to the Board for recommendation to the county assembly for approval; (d) overseeing and monitoring the implementation of approved projects. 	<p>The County Government Act, 2012 establishes structures from the county to the village level. These structures can be used for identification of the priority projects and for public participation.</p> <p>For instance, one of the functions of a ward administrator as enshrined in Section 51(3)(g) of the County Government Act, 2012 is coordination <u><i>and facilitation of citizen participation in the development of policies and plans and delivery of services</i></u></p> <p>In addition to the Ward Administrator, the County Governments Act establishes the office of the village administrator and the village council. Both these structures have the responsibility of facilitating public participation at the grass roots level.</p> <p>Further, currently both County Executive and the County Assembly carry out public participation</p>

Pg/Clause	Provision	Observations and Recommendations
		<p>in the budget making process.</p> <p>The Bill seeks to introduce another level of public participation. There is likely to be lethargy and fatigue if the public is to be called to several public participation fora over the same issue.</p> <p>If the separate structure is to be retained then the teams conducting public participation have to find a way of working together with the County Executive so that it is carried out at the same time. This will also save on resources.</p>
Page 73 cls.36	The Bill proposes that the list of proposed projects shall be submitted to the board before the end of September each year or such month as may be determined by the County Executive member to ensure timely inclusion of the projects in the annual county budget in a particular year.	<p>The timeline of end of September is late because Section 126(3) of the PFM requires that the <i>County Executive Committee member responsible for planning shall, not later than the 1st September in each year, submit the development plan to the county assembly for its approval, and send a copy to the Commission on Revenue Allocation and the National Treasury.</i></p> <p>If the Fund structure is to be retained the Board has to find a way of engaging respective departments on a continuous basis to ensure that the proposed projects are included in all the planning documents.</p>
45	Clause 45 provides that the Board will ensure there is no duplication of projects.	There is no provision on how this will happen noting that there is no stage in the Bill where it is anticipated that the departments and the Fund

Pg/Clause	Provision	Observations and Recommendations
		<p>will come together to harmonize the projects.</p> <p>There should be continuous engagement between the Fund and the relevant departments.</p>

3. Conclusion

The idea of having a framework that ensures there is equitable development within the county is good and is welcome. This will ensure that there are no areas within a county which are marginalized. It will ensure all citizens are able to enjoy the fruits of devolution. However such framework should not lead to overlaps or duplication of roles or create room for turf wars between the departments and the Fund, which in the end will impact negatively on service delivery.

We are of the view that there are sufficient structures that can be utilized to achieve the objectives of the Bill without necessarily creating additional structures.

The County Assembly for instance can ensure that there is equitable development within the county as it approves various planning documents at various stages before finally approving the budget estimates. The County Assembly should, before approving the Annual Development Plan, the Country Fiscal Strategy paper and the budget estimates ensure that there are projects for each ward.

Further, the administrative structures established in the County Governments Act, 2012 can be used to identify priority projects to be included in the Annual Development Plan.

Having ascertained beforehand the projects to be implemented, it will be easy for the County Assembly to monitor implementation of the said projects and a separate structure will not be necessary.

MINUTES OF THE 25TH MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE & BUDGET HELD ON MONDAY, 9TH APRIL, 2018 IN COMMITTEE ROOM 4, FIRST FLOOR, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M.

PRESENT

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. Mutula Kilonzo Junior, MP - Member
3. Sen. (Dr.) Ali Abdullahi Ibrahim, CBS, MP - Member
4. Sen. (Dr) Rose Nyamunga, MP - Member
5. Sen. CPA Farhiya Haji, MP - Member

ABSENT WITH APOLOGY

1. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
2. Sen. Aaron Cheruiyot, MP - Member
3. Sen. Wetang'ula Moses Masika, EGH, MP - Member
4. Sen. Boniface Mutinda Kabaka, MP - Member

IN-ATTENDANCE

1. Mr. Boniface Lenairoshi
2. Mr. Christopher Gitonga
3. Mr. Fredrick Muthengi
4. Ms. Julie Mwithiga
5. Mr. Moses Kenyanchui
6. Ms. Winfred Atieno

SENATE SECRETARIAT

- Principal Clerk Assistant
- Clerk Assistant
- PBO
- PBO
- Legal Counsel
- Audio Officer

MIN. NO. 113/4/2018: PRAYERS

The Chairperson called the meeting to order at 11.15a.m and welcomed the Members. This was followed with a word of prayer.

MIN.NO. 114/4/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Mutula Kilonzo Jnr and seconded by Sen. Farhiya Haji.

MIN.NO. 115/4/2018: CONFIRMATION OF MINUTES OF PREVIOUS MEETING

The minutes of the 24th meeting held on Thursday, 29thMarch, 2018 at 11.00 am were confirmed as the true record of the deliberations after they were proposed by Sen. Farhiya Haji and seconded by Sen. Mutula Kilonzo Junior subject to the following amendments-

- a) The Collective Bargaining Agreement (2017) for health workers in counties totalled to Kshs. 11. 8 billion and
- b) The DORB 2018 uses the 2013/14 Audited accounts as the most recent yet the Auditor General finalized and submitted to Parliament reports up to FY 2015/16. The delay in approving Auditor General's report by the National Assembly led to misleading percentages on the revenue allocated to the county governments.

MIN. NO. 116/4/2018: CONSIDERATION OF THE COUNTY WARDS DEVELOPMENT EQUALISATION BILL, 2018

The Committee was informed that the Bill was read a First Time in the House on 29th March, 2018. Pursuant to Standing Orders 134(5) the Committee was expected to facilitate Public participation and report back to the House within 30 days.

The Committee resolved to:

- a) deliberate on the bill on Tuesday, 17th April, 2018
- b) conduct public hearing on Wednesday, 18th April, 2018

MIN. NO. 117/4/2018: CONSIDERATION OF THE COUNTY ALLOCATION OF REVENUE - LEGISLATIVE PROPOSAL.

The Committee was informed that:

- a) 7 days after the Division of Revenue Act is enacted the County Allocation of Revenue Bill is supposed to be introduced in the House.
- b) The second generation formula is applied in allocating equitable share. The formula had 6 parameters namely: Population (45%), Equal Share (26%), Poverty (18%), Land (8%), Fiscal Responsibility (2%) and Development Factor (1%).
- c) The Kenya National Bureau of Statistics (KNBS) had launched a report (Kenya Integrated Households Budget Survey -KIHBS 2015/16) which indicted new variations in poverty. The legislative proposal used poverty index as per the year 2009.
- d) The equitable share for financial Year 2018/19 was Ksh. 314 Billion.
- e) The legislative proposal had three schedules-
 - ✓ First Schedule - equitable share

- ✓ Second Schedule - conditional allocation from national revenue
- ✓ Third schedule - conditional allocation from development partners as loans and grants.

f) There was a trend of providing fourth schedule on budget ceilings on recurrent expenditure for county executives and assemblies

Deliberation ensued.

The Committee resolved that the legislative proposal be published using the poverty index as at 2009 and an addition of the fourth schedule on recurrent expenditures for county government.

MIN. NO. 118/4/2018: CONSIDERATION OF REQUEST FOR A HALF DAY MEETING WITH COMMISSION ON REVENUE ALLOCATION (CRA).

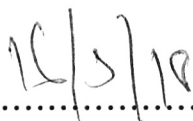
The Committee was informed that the CRA had requested for a half day meeting with the Committee to discuss the marginalization policy on Monday, 16th April, 2018.

The Committee considered the request and resolved that the meeting be held on Friday, 13th April, 2018 from 8:00am.

MIN. NO. 119/4/2018: ADJOURNMENT;

There being no other business the Chairperson adjourned the meeting at 12.40 p.m.

SIGNATURE.....
 (CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)

DATE.....

MINUTES OF THE 27TH MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE & BUDGET HELD ON WEDNESDAY, 19TH APRIL, 2018 AT THE MINI CHAMBERS, FIRST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. Mutula Kilonzo Junior, MP - Member
3. Sen. (Dr) Rose Nyamunga, MP - Member

ABSENT WITH APOLOGY

4. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
5. Sen. Wetang'ula Moses Masika, EGH, MP - Member
6. Sen. (Dr.) Ali Abdullahi Ibrahim, CBS, MP - Member
7. Sen. CPA Farhiya Haji, MP - Member

ABSENT

8. Sen. Aaron Cheruiyot, MP - Member
9. Sen. Boniface Mutinda Kabaka, MP - Member

IN-ATTENDANCE

1. Mr. Christopher Gitonga
2. Mr. Martin Masinde
3. Ms. Judy Wahito
4. Ms. Julie Mwithiga
5. Ms. Winfred Atieno

SENATE SECRETARIAT

- Clerk Assistant
- PBO
- Legal Counsel
- PBO
- Audio Officer

IN-ATTENDANCE - Representatives of Public Institutions and Members of Public

See the attached list

MIN. NO. 124/4/2018: PRAYERS

The Chairperson called the meeting to order at 10.20 a.m and welcomed the Members. This was followed with a word of prayer.

MIN.NO. 125/4/2018: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Mutula Kilonzo Junior and seconded by Sen. Rose Nyamunga.

MIN. NO. 126/4/2018: PUBLIC HEARING ON THE COUNTY WARDS DEVELOPMENT EQUALIZATION FUND, BILL, 2018

The Chairperson welcomed the Members of the public and public institutions representatives to the meeting and briefed them the importance of the exercise at hand.

He also hinted on the importance of the bill. Submissions on the bill were made as follows:

A. Commission on Revenue Allocation

Dr. Kiringai, Chairperson of the Commission informed the Committee that-

- a) The 8% provided in the bill may not be feasible for most urban counties which had failed to adhere to section 107 of PFM Act on allocation of a minimum of 30% of the county government's budget to the development expenditure,
- b) The bill as drafted may raise concerns on duplication of expenditure leading to higher recurrent spending and consequently making it difficult for counties to maintain the PFMA threshold of a minimum of 30% development expenditure,
- c) All funds allocated to the County Wards Development Equalization Fund should be used for development projects only so as to ensure adherence to principles of fiscal responsibility at the county level,
- d) The Commission carried out an exercise that analyzed the effect of the bill to the current financial management in the counties and established that only 31 counties would achieve the required 30% with 8% of its equitable share transferred directly to a ward development fund,
- e) Based on the Division of Revenue Act 2018, which allocates counties an equitable share of Kshs. 314 billion, a cumulative amount of Kshs 25.12 billion would be allocated to the Ward Development Funds with amounts ranging from Kshs. 12.5 million per ward in Kiambu to Kshs. 31.5 million per ward in Isiolo,
- f) Sharing the fund equally among the wards in a county as stipulated under section 8 of the Act would result to further marginalization; since considering per capita, the range would be between Ksh. 170 in Kamenu, Kiambu County to Kshs. 27,005 in Basuba, in Lamu County, That would not translate to equitable sharing as envisioned in Article 203 (1)(g) of the constitution,
- g) The Commission is concerned that there is no criteria that counties use to allocate funds to the wards and this has led to the re-centralization with some wards being side-lined,
- h) The bill was not specific on the sectors that would be funded by the proposed fund; that may result in duplication of service delivery in one sector while denying servicing of other sectors,
- i) The alternative to the bill would be-
 - i) Minimize the Fund structure – Section 17 (Composition of the Board)
 - ii) Specify projects pertinent to the wards that were not included in county budget and
 - iii) Delete clause 14(2)(c) – on borrowing money or making investments – This may open the Fund for use that is not in line with the Fund objectives.
- j) There was lack of consistency in the bill: some sub heading omitted the word 'equalisation.'

- k) The bill did not consider section 116 of PFM Act requirements on setting up public funds that would address areas of development which were not in the county budget.

Proposed Amendments

- i) Section 4 by deleting paragraphs (a) & (b) and insert Article 174 (g) – on equitable sharing of national & local resources throughout Kenya,
- ii) Section 8(1) to replace equally with equitably,
- iii) Section 17(c), 22 and 32(1) to allow the composition of the board and its secretariat be officers who are employed by the county governments including ward administrator to reduce administrative costs like salaries and wages,
- iv) Section 43 to align it with requirements provided in PFM Act.
- v) Section 116(12) of PFM provides that county public fund administrator should be designated by the CECM in charge of finance; thus, clause 17(d) should be deleted and
- vi) Delete clauses: 14(2), 16, 21(1), 23, 26(1), 28(3&4) and 38.

B. The National Treasury

The Committee was informed as follows:

- a) The bill contradicted the provisions of the Article 201(4)(b) of the Constitution and section 116(1) of the PFM Act on the powers and responsibilities to establish county public funds,
- b) The bill claws back the fiscal powers of the county governments to plan, budget, spend and report as provided in Article 201 and 203,
- c) The bill tends to water down the development planning framework established under PFM Act and section 108 of the County Government Act,
- d) The bill proposed to spread resources of the county governments thinly across the county wards thus reducing the capacity of the county governments to finance priority large scale projects which may transcend more than one ward and with higher socio-economic impact,
- e) Clause 8 of the bill contravenes Article 201(b) which requires public finance system to promote an equitable society,
- f) The bill may lead to duplication of effort and double allocation of funds thus, leading to wasteful spending of public funds,
- g) There was no evidence on how the bill met the criteria for establishing a county public fund; a rationalisation on how the activities to be financed by the fund could not be funded through the normal budgetary process,

- h) The bill gives the board the powers to borrow without making reference to the Constitution and PFM Act provisions on borrowing by the county governments,
- i) The bill offended several provisions of existing legislations, thus, it should be withdrawn and
- j) The alternative of the bill would be to develop a master plan that anchors all development initiatives meant to address inequalities. That would guide planning, budgeting and implementation.

C. Controller of Budget

The Controller of Budget informed the Committee as follows-

- a) Clause 5(2)(a) negates the spirit contemplated in PFM Act section 126 in which county governments were expected to formulate Annual Development Plans with approval of county assemblies. During identification of programmes the members of the public are consulted; further, activities related to the programme and costing is the role of county government,
- b) The bill did not take into account the existing budgeting structures as well as provide how the proposed structure will relate with the county governments' sectors,
- c) Section 104 of the County government Act, 2012 provides that planning must be done before appropriation. The bill proposed allocation of funds, then identify the projects to be implemented,
- d) Clause 5(3) - Enforcement may be a challenge since the CoB role is normally at the tail end of the budgeting process. County Assemblies were the organs vested with powers to reinforce implementation of the Act,
- e) Clause 14 and 28- creation of the boards and project implementation Committees is an adverse to the economy whose wage bill is far above the international acceptable standards about 7% of GDP,
- f) Clause 21 proposes establishment of fund; section 116 of PFM Act gives that power to the County Executive Committee Member in charge of finance to establish public funds and designate an officer to administer. The bill proposed the fund administrator to be recruited by the County Public Service Board,
- g) The structure in the bill fails to embrace the principles of public finance like prudence and economic use of public resources since the structure would lead to duplication and wastage of resources,
- h) The bill also proposes another level of public participation in budget process: that may lead to fatigue and cause lethargy to the members of the public,
- i) Clause 36 contradicts the budget making process as provided in section 126 of the PFM which required submission by 1st September,

- j) some assemblies had enacted ward development laws but they were inconsistent with existing laws,
- k) The office of the Controller of Budget issued two circulars-
 - a) 2014 circular - highlighted procedures of establishing development funds with a view of actualizing Article 176 and
 - b) 2018 circular - highlighted conditions and procedure to follow in establishing the development Funds.
- c) It was recommended that since the bill appeared to undermine the role of county assembly in budget making process-
 - i) The ward based project should be integrated in the county budget; and adopt the existing structures in identification of programmes, costing of activities and implementation and
 - ii) Further, counties which had not established structures as envisioned in the law, the Senate should enforce establishment and operationalization of such decentralized structures.

The Chairperson directed the office of the Controller of Budget to forward the circulars to the Committee for the purpose of information.

D. International Budget Partnership

The committee was informed as follows:

- a) The bill did not create a link with existing ward/ equitable development laws in some counties,
- b) The proposed fund skewed counties' development budget toward single-ward projects and reduced their ability to budget for countywide flagship projects in CIDPs,
- c) The criteria proposed to allocate funds towards did not promote equity,
- d) Clause 5(2)(a) was not clear on which share of revenue was referred
- e) Further, they indicated that-
 - i) The bill advanced inequality instead of equity in which people with different needs and capabilities should be treated differently.
 - ii) The intra-county inequalities would remain wider even within richer and poorer counties.
 - iii) The bill should consider responding to the inequalities in poverty and access to services.
 - iv) The basis of allocating 8% was not justifiable.
 - v) Some counties were at different levels of capital development and it was not fair to make them commit similar percentages in their budgets to allow other/ new projects.
 - vi) The bill does not provide the link to its proposed structure with the CIDP and other county plans

- vii) Despite the flows, the existing mechanisms in counties were more equitable than the proposed approach.
- f) The main tenet of devolution was to enhance the principles of subsidiarity and fiscal accountability. The bill appeared to negate the principles. It was not feasible to create national law that dictates how each county allocates its resources,
- g) The operationalisation of the act would increase the wage bill thus shrinking the resources meant for development and
- h) The law should provide a framework for equitable distribution of resources within counties which would considers different measures of need across the wards and villages.

E. Muranga County Assembly

Hon. Silas Mwangi, Chairperson Finance and Planning Committee, on behalf of the Assembly informed the Committee as follows-

- a) The Assembly was in support of the bill; for it was meant to cure mischief by the county executive where they implement projects in wards regarded to be in support of the executive,
- b) Clause 8 should be amended such that the funds would be shared equitably since different wards were not at the same level,
- c) Clause 32 should be amended to allow county assemblies approve the project co-ordinator,
- d) Clause 46(2) should be amended to include independent Members of county assembly.

F. UasinGishu County Assembly

Hon. Jonathan Ngetich, Chairperson, Budget and Appropriation Committee, on behalf of the County Assembly informed the Committee as follows-

- a) The Assembly was in support of the bill,
- b) County assemblies were bound by PFM regulations which allowed them to only amend budgets to a maximum of 1% per vote; that was an hinderance to budgeting process,
- c) Amend clause 5(2) –to replace 8% with 15%
- d) Clause 28(2) does not allow participation of the area MCA in nomination of project proposal and implementation Committee. Amend to read two persons female and male nominated by the County Assembly Service Board (CASB) per ward and
- e) Amend clause 28(10) for quorum to be a ratio. Proposed half of the membership.

G. Kakamega County Assembly

Hon. Lystone, on behalf of assembly, informed the Committee as follows-

- a) The Assembly was supporting the bill since it would promote equal development the wards,
- b) Amend the bill such that the share would be a percentage between 15 and 20 and
- c) Amend to allow involvement of MCA in constitution of the Board; CASB should nominate 2 representatives.

H. Nairobi City County Assembly

Hon. MwauraSamora, on behalf of assembly, informed the Committee as follows:

- a) The Assembly was in support of the bill,
- b) Nairobi City County executive did not adhere to the requirement of 30% development expenditure,
- c) The proposed 8% would help cure the problem of underfunding of development projects,
- d) Amend the bill to have an additional clause such that there would be a committee of the Senate that oversees the implementation of the Act.

I. Members of public

Hon. Charles Mwangi Kirigwi informed the Committee that:

He supports the bill and is proposing the following amendments-

- a) Clause 12(2) to include county assembly,
- b) Clause 13 (1-10) should be aligned on the understanding that its only one county office that deals with issues of fund disbursements and implementation and
- c) Clause 25(1) to allow board to open and maintain development account instead of a committee.

Mr. Joseph Mungai informed the Committee that:

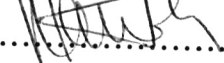
- a) He supports the bill especially because it advocated for extensive public participation,
- b) The bill proposed an impartial development process, decentralised development throughout the county and strong administrative structures that would oversee the management of the funds,
- c) The Bill enhanced the functional independence of county assemblies especially in executing their oversight roles on the county leadership,

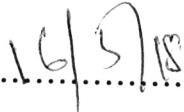
- d) The bill should be amended to provide that allocation for the wards should be determined by the population and revenues collected from the ward,
- e) Funds budget for development projects should not be diverted to other projects through supplementary budgets and
- f) Amend the bill to allow the allocation of funds be based on population other than geographical areas.

MIN. NO. 127/4/2018: ADJOURNMENT;

The Chairperson thanked the members of public and representatives of public institution for their productive submissions.

The Chairperson adjourned the meeting at 1.48 p.m.

SIGNATURE.....
(CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)

DATE.....

Detailed list of In-Attendance

A. Commission on Revenue Allocation

1. Dr. Jane Kiringai – Chairperson
2. Mr. George Ooko - Commission Secretary
3. Mr. James Katule
4. Ms. JacinterHezron – PA to the Chairperson

B. National Treasury

1. Hon. Nelson Gaichuhie – Chief Administrative Secretary
2. Mr. Albert Mwenda – Director Intergovernmental Fiscal Relations

C. Office of Controller of Budget

1. Ms. Agnes Odhiambo
2. Mr. Stephen Masha
3. Ms. Selina Iseme

D. International Budget Partnership

1. Dr. Abraham Rugo
2. Mr. John Kinuthia
3. Ms. Sonia Kayirere

E. Muranga County Assembly

1. MCA RabanMaina
2. MCA Kenneth Cubi
3. MCA Joseph Muchemi
4. MCA Francis Kibe
5. MCA Joseph Kimathi
6. MCA Samuel Kihurunjo
7. MCA KiiruMwangi
8. MCA Joyce Njoki
9. MCA Wilson Gitau
10. MCA Moses Murigi
11. MCA Francis Kibe
12. MCA Charles Kahoro
13. MCA PelagiahMaina
14. MCA Stanley Muhia
15. MCA Murigi Amos
16. MCA Jeremiah Kongo
17. MCA HohnMungai
18. MCA John Kairu
19. MCA Simon Mwaura

F. UasinGishu County Assembly

1. MCA Jonathan Ngetich
2. MCA Stephen Leting
3. Mr. Willet Sang – Fiscal Analyst

G. Kakamega County Assembly

1. MCA LystoneAribodo
2. MCA Anne Mulwale
3. MCA B. J. Omboko
4. Ms. Doreen Wesonga – Staff
5. Mr. Mwima David - Staff

H. Nairobi City County Assembly

1. MCA Ann Thumbi
2. MCA Charles Kiigwi
3. MCA ChegeMwaura
4. MCA GuyoSama
5. MCA JadsonNgugi
6. MCA MwangiNhihia
7. MCA MwangiNhihia
8. MCA MwauraSamora
9. MCA NaftalyNgugi
10. MCA Ruth Wambui
11. MCA Simon Kahuha
12. MCA WaitheraChege

13. Ms. Josephine Kithu – Clerk Assistant
14. Ms. Kanana Rose– Clerk Assistant

I. Members of public

1. Hon. Charles Mwangi Kirigwi
2. Mr. Joseph Mungai
3. Mr. James Kithinji

MEMORANDUM TO THE SENATE ON THE COUNTY WARDS DEVELOPMENT EQUALIZATION FUND BILL

The International Budget Partnership Kenya would like to submit this memorandum in response to the call for views from the public on the County Wards Development Equalization Fund Bill, 2018.

Brief about the International Budget Partnership Kenya

We are non-governmental organization focused on improving Transparency, Accountability, Participation and Equity in Public Finance management in Kenya. We do this by working with partners in government, civil society and the media.

Summary

This memorandum is a summary of our analysis of the adherence of the bill to the principles of equity. The memorandum also draws lessons from two previous studies done by IBPK on existing intra-county resource distribution mechanisms in 5 counties.

From this review we make several key observations:

- i. The bill describes the objectives of their funds as enhancing equity among wards, but we find that the distribution criteria used is not equitable.
- ii. The proposed size of the fund skew counties' development budgets toward single-ward projects and reduce their ability to budget for countywide or even regional projects.
- iii. The bill does not create a link with existing equitable development laws in some counties.

Analysis

1. **Equity means that people have different needs and capabilities and they should be treated differently.** The County Wards Development Equalization Fund Bill proposes to establish a fund in each county to ensure there is equitable development across wards. The bill proposes to achieve this by distributing eight percent of revenue allocated to each county equally among wards in each county. Here we make the assumption that this means the revenue allocated to each county through the Equitable Revenue Sharing formula by the Commission on Revenue Allocation. The language in the bill does not make it clear whether it includes the own source revenue as well.
2. **The bill confuses the concepts of equality and equity.** Section 3 (d) of the bill gives equitable sharing of resources as one of its purposes. Then the bill goes ahead to suggest that the fund created in each county be shared equally among wards. This is contradictory and

goes against the principles of fairness in resource distribution.¹ Equal allocations can only be termed as equitable in cases where there are no relevant inequalities among the wards in a county, however, this is not the case as we argue in this memorandum.

3. **Treating wards equally may exacerbate existing inequalities.** Data from the Kenya National Bureau of Statistics and the Society for International Development show that there are very wide inequalities among wards.² The gaps are much wider than those among counties or constituencies. The data shows that the range of poverty rates across counties is four to one: the share of poor people in Turkana County (87.5 percent) is four times the share of poor people in Nairobi County (21.8 percent). As we move to the constituency level, the range increases to nine to one, and the ward with the highest share of poor people (Katilia Ward in Turkana County) has a poverty rate of 99 percent, 30 times that of the ward with the least share of poor people (Lower Savannah Ward in Nairobi), where the poverty rate is three percent. This shows that the discussion about marginalization and inequality in Kenya cannot be confined to the inter-county level but must consider what happens within counties as well.
4. **Intra-county inequalities remain wide even within richer and poorer counties.** Let us take an example the number of poor people in the richest and poorest counties in Kenya: Nairobi and Turkana counties (Table 1 and 2). In Nairobi County, Lower Savanna Ward is home to only 0.2 percent of the poor people in the county. Meanwhile, Lindi Ward has the highest proportion of poor residents at 3.5 percent. This means the number of poor people in Lindi is 23 times that of Lower Savanna. Therefore, it is hard to justify both wards receiving the same level of funds from an equalization fund.
5. **The inequalities among wards are also wide within poorer counties.** In Turkana County, Turkwel is the ward with the largest share of poor people making up 5.9 percent of all poor people in the county. Meanwhile, Lobokat Ward has a share of just 1 percent of the county's poor people. This means that Turkwel has 6 times the number of poor people in Lobokat. However, the bill proposes that both wards should be allocated the same amount of money to develop. Does that seem fair?
6. **Wide inequalities also exist among wards in access to key services at the county level.** One of the most capital-intensive sectors run by counties is the provision of water. We look at Mombasa and Narok counties to show the level of disparities in access to improved sources of water (Table 3 and 4). Mombasa county has one of the highest rate of access while Narok has one of the lowest. In Mombasa, Kipevu Ward has the highest number of people without access to water and they make up 6.8 percent of all people without water access in Mombasa. Meanwhile Mwakirunge Ward, which has the best access, has only 0.2 percent of people without access to improved sources of water. This means that Kipevu has 33 times the number of people without access as Mwakirunge. The inequalities exist even in counties where the average access is very low and that is the case in Narok. Kilgoris Central Ward has 3 times the number of people without access compared to Ololmasani Ward

¹ <https://www.internationalbudget.org/wp-content/uploads/ibp-kenya-paper-principles-and-practices-in-public-resource-distribution-8-2016.pdf>

² <https://www.knbs.or.ke/download/exploring-kenya-inequality-national-report/>

which has the best access in Narok county.

- 7. Given large inequalities in poverty and access to services, equal shares of funding cannot be equitable.** Keeping the focus on access to water in Mombasa and Narok, we look at the per capita allocation to everyone without access to an improved source of water. In Mombasa, on average everyone would get Ksh. 2,335. However, the spread across the wards is very wide. The per capita allocation in Mwakirunge is Ksh. 37,981 which is 16 times the average. Meanwhile, in Kipevu the allocation is Ksh. 1,149. The same scenario plays out in Narok county where the allocation per person varies by a wide margin between the ward with the highest number without access to water and the lowest.
- 8. Allocating eight percent of the equitable share of revenue to the fund has different effects across counties.** Due to differences in need and size of local budgets, taking eight percent of the budget will have different effects in different counties. For example, the actual development expenditure for Taita Taveta county in 2016/17 was Ksh.406 million. Eight percent of the equitable revenue share to Taita Taveta County was Ksh. 286 million. This was equal to 70 percent of total development expenditure in the county as shown in Table 6. In Makeni county, the ratio would only be 13 percent of the county's development expenditure. Therefore, the discretion left to county governments under this bill on capital budgets varies from county to county. The larger the proportion, the more the resource to single ward projects and less for projects whose benefits go beyond ward boundaries. County governments with smaller budgets such as Taita Taveta, Tharaka Nithi, Vihiga and Lamu will have a larger proportion of their development budget taken up by the fund. Over 35 percent of the development budgets in these four counties would be under the fund. This may limit the power of counties to budget for development projects that go beyond priorities of one ward. This has been one key lesson in some of the counties that already have equitable development laws.
- 9. What is the basis of allocating eight percent of the allocated revenue to the fund?** The bill does not give any explanation on why eight percent is the right proportion in all the counties. The Senate should seek for justification on this percentage.
- 10. Counties are at different levels of Capital Development and it is not fair to make them commit similar percentages for their budgets.** The brick and mortar approach to development is worrying as it has seen the putting up of many capital projects that are not planned with matching recurrent costs such as personnel, operations and maintenance. This could lead to unutilized projects as has happened with other capital only funds. The bill fails to make this critical connection. Further the assumption of need for capital development into perpetuity needs to be cured. Can the bill expound further on the conditions upon which the counties should implement the bill?
- 11. Some counties already have equitable development laws in place to ensure there is equitable distribution of resources among wards.** In the first five years of devolution several counties developed laws aimed at addressing inequalities among their wards as shown in Table 5. Our analysis of emerging practices in the counties show that most approaches

being taken do make some effort to be equitable, but they generally fall short³⁴. Counties like Elgeyo Marakwet, West Pokot and Meru among others have such laws in place. While the counties may not have perfect laws in equitable distribution terms, they have made county-specific efforts that the Senate with the help of Commission of Revenue Allocation should help improve.

12. Despite their flaws, existing mechanisms in counties are more equitable than the one proposed in the bill. Most of the current mechanisms used in some counties have high equal components but there are certain equitable components as well. For example, in Elgeyo-Marakwet the Equitable Development Act distributes 60 percent of its development budget equally but the remaining 40 percent is distributed based on measures of need such as population across wards, land area, arid and semi-arid regions in the county and so on. Therefore, the distribution criteria proposed in this bill will actually introduce a less equitable criteria in areas that some counties are already making some positive steps.

13. The bill does not link with the County Integrated Development Plan or any other county plans. Without making a clear link with county plans the bill creates a parallel process for the identification and selection of development projects creating extra logistical processes. If the assumption is that projects within CIDP are generated by the public then the link should be made to save costs on a parallel process.

Signed on this date: 18 April 2018

Dr. Abraham Rugo Muriu
Country Manager

Summary and Conclusion

In Summary:

The bill describes the objectives of their funds as enhancing equity among wards, but we find that the distribution criteria used is not equitable.

The proposed size of the fund skew counties' development budgets toward single-ward projects and reduce their ability to budget for countywide or even regional projects.

The bill does not create a link with existing equitable development laws in some counties.

In Conclusion

A key tenet of devolution in Kenya is to enhance subsidiarity meaning that decisions and functions should be carried out at the level that is most appropriate. A second one is Fiscal Accountability where the government should provide services to the citizens it collects taxes from.

In so saying we have argued in our memorandum that we fear that those two principles are being

³ <https://www.internationalbudget.org/wp-content/uploads/ibp-kenya-paper-sharing-public-resources-within-counties-8-2016.pdf>

⁴ <https://www.internationalbudget.org/wp-content/uploads/kenya-revenue-sharing-mechanisms-and-intra-county-inequalities-ibp-2018.pdf>

negated through this proposed County Ward Fund bill. It is not feasible to create a national law that dictates how each county should allocate its resources internally. For each county is unique. Why not let the County Assemblies develop their own unique laws and enforce them. And we have examples in Makeni, Elgeyo Marakwet, "Meru",

We cannot treat different problems similarly and expect to solve them. By treating unequal problems equally, we are exacerbating inequality that is against the word and spirit of our constitution.

Further, the bill proposes other structures which only increases the wage bill. You will recall that when we stood here on the Division of Revenue we expressed our concern on the shrinking allocation to counties.

What we think is feasible is to provide a framework for equitable distribution within counties that considers different measures of need within across the wards and even villages. The leave the specifics to the respective counties. Since some counties have and some more are already developing such frameworks, then this law should provide a broader framework for that. Some of this can borrow from the data that the CRA is using of ward level inequalities.

Table 1: Ward Allocations in Turkana County Based on Population Living Below the Poverty Line

			Equitable Share 2017/18	10,071,700,000				
			8% of the Equitable Share	805,736,000				
Wards	Headcount Index: Percent of Individuals below Poverty Line	Total Population	Ward Population below Poverty Line	Ward Allocations	Ward Share of Total number of People below Poverty Line	Ward Share of Total Allocation under the Bill	Per Capita Allocation	
1	Turkwel	87.2	47,271	41,222	26,857,867	5.9%	3.3%	652
2	Lokori/Kochodin	92.3	44,002	40,600	26,857,867	5.8%	3.3%	662
3	Lokichar	87.7	43,939	38,513	26,857,867	5.5%	3.3%	697
4	Katilu	92.3	41,409	38,224	26,857,867	5.5%	3.3%	703
5	Letea	89.6	41,532	37,214	26,857,867	5.3%	3.3%	722
6	Nanaam	86.8	37,578	32,602	26,857,867	4.6%	3.3%	824
7	Lakezone	92.2	34,232	31,559	26,857,867	4.5%	3.3%	851
8	Kotaruk/Lobei	98.4	31,506	31,009	26,857,867	4.4%	3.3%	866
9	Kerio Delta	83.1	33,883	28,157	26,857,867	4.0%	3.3%	954
10	Kaaleng/Kaikor	93.8	29,827	27,964	26,857,867	4.0%	3.3%	960
11	Kakuma	81.7	31,054	25,381	26,857,867	3.6%	3.3%	1,058
12	Kapedo/Napeitom	89.8	25,274	22,694	26,857,867	3.2%	3.3%	1,183
13	Katilia	98.9	20,922	20,699	26,857,867	3.0%	3.3%	1,298
14	Kaeris	94.8	21,332	20,225	26,857,867	2.9%	3.3%	1,328
15	Kalapata	85.3	23,509	20,059	26,857,867	2.9%	3.3%	1,339
16	Lodwar Township	64.8	30,816	19,968	26,857,867	2.8%	3.3%	1,345
17	Kangatoha	87.3	22,656	19,785	26,857,867	2.8%	3.3%	1,357
18	Kibish	92.5	21,268	19,666	26,857,867	2.8%	3.3%	1,366
19	Lokichogio	74.7	26,289	19,632	26,857,867	2.8%	3.3%	1,368
20	Lapur	88.1	21,797	19,195	26,857,867	2.7%	3.3%	1,399
21	Loima	94.4	19,612	18,514	26,857,867	2.6%	3.3%	1,451
22	Lokirama/Lorengippi	87.2	21,013	18,331	26,857,867	2.6%	3.3%	1,465
23	Kalokol	85.0	19,289	16,397	26,857,867	2.3%	3.3%	1,638
24	Songot	93.3	17,517	16,343	26,857,867	2.3%	3.3%	1,643
25	Kalobeyei	88.8	18,262	16,216	26,857,867	2.3%	3.3%	1,656
26	Kanamkemer	70.2	21,817	15,307	26,857,867	2.2%	3.3%	1,755
27	Nakalale	86.6	15,476	13,396	26,857,867	1.9%	3.3%	2,005
28	Kaputir	88.0	14,984	13,185	26,857,867	1.9%	3.3%	2,037
29	Lopur	89.1	13,441	11,977	26,857,867	1.7%	3.3%	2,242
30	Lobokat	74.0	9,839	7,278	26,857,867	1.0%	3.3%	3,690
Total		801,346	701,312	805,736,000	100%	100%	1,149	

Range of Poverty Rate

Table 2: Ward Allocations in Nairobi County Based on Population Living Below the Poverty Line

			Equitable Share 2017/18	15,402,000,000			
			8% of the Equitable Share	1,232,160,000			
Wards	Headcount Index: Percent of Individuals below Poverty Line	Ward Population	Ward Population below Poverty Line	Ward Allocations	Ward Share of Total number of People below Poverty Line	Ward Share of Total Allocation under the Bill	Per Capita Allocation
1 Lindi	45.1	52,456	23,642	14,496,000	3.5%	1.2%	613
2 Korogocho	50.7	41,915	21,269	14,496,000	3.2%	1.2%	682
3 Imara Daima	26.5	70,455	18,650	14,496,000	2.8%	1.2%	777
4 Mlango Kubwa	47.3	38,135	18,036	14,496,000	2.7%	1.2%	804
5 Serangombe	30.8	54,310	16,711	14,496,000	2.5%	1.2%	867
6 Githurai	34.3	47,067	16,153	14,496,000	2.4%	1.2%	897
7 Kangemi	35.4	44,413	15,739	14,496,000	2.4%	1.2%	921
8 Riruta	24.3	64,763	15,736	14,496,000	2.4%	1.2%	921
9 Gatina	33.3	45,828	15,240	14,496,000	2.3%	1.2%	969
10 Mabatini	53.0	28,221	14,954	14,496,000	2.2%	1.2%	991
11 Upper Savanna	32.7	44,731	14,622	14,496,000	2.2%	1.2%	991
12 Babadogo	34.7	39,978	13,871	14,496,000	2.1%	1.2%	1,045
13 Eastleigh South	21.1	65,413	13,784	14,496,000	2.1%	1.2%	1,052
14 Kabiro	34.2	39,908	13,639	14,496,000	2.0%	1.2%	1,063
15 Laini Saba	47.8	28,172	13,475	14,496,000	2.0%	1.2%	1,076
16 Njiru	35.7	34,412	12,287	14,496,000	1.8%	1.2%	1,180
17 Moutain View	34.0	35,947	12,219	14,496,000	1.8%	1.2%	1,186
18 Utalii	33.7	35,565	11,987	14,496,000	1.8%	1.2%	1,209
19 Dandora Area Iv	26.0	45,544	11,819	14,496,000	1.8%	1.2%	1,226
20 Mathare North	20.6	54,971	11,332	14,496,000	1.7%	1.2%	1,279
21 Hospital	57.1	19,823	11,321	14,496,000	1.7%	1.2%	1,280
22 Zimmerman	28.8	38,627	11,118	14,496,000	1.7%	1.2%	1,304
23 Nairobi South	21.2	52,252	11,075	14,496,000	1.7%	1.2%	1,309
24 Nyayo Highrise	44.2	24,174	10,696	14,496,000	1.6%	1.2%	1,355
25 Huruma	27.2	37,923	10,307	14,496,000	1.5%	1.2%	1,406
26 Kawangware	37.1	27,229	10,114	14,496,000	1.5%	1.2%	1,433
27 Viwandani	22.4	44,850	10,034	14,496,000	1.5%	1.2%	1,445
28 Ngei	28.4	34,437	9,787	14,496,000	1.5%	1.2%	1,481
29 Pipeline	17.0	56,133	9,539	14,496,000	1.4%	1.2%	1,520
30 Dandora Area Iii	22.7	39,961	9,086	14,496,000	1.4%	1.2%	1,595
31 Mwiki	23.2	38,988	9,030	14,496,000	1.4%	1.2%	1,605
32 Clay City	22.1	39,510	8,743	14,496,000	1.3%	1.2%	1,658
33 Makina	24.9	34,805	8,681	14,496,000	1.3%	1.2%	1,670
34 Kware	35.8	23,747	8,500	14,496,000	1.3%	1.2%	1,705
35 Kitisuru	27.8	29,883	8,301	14,496,000	1.2%	1.2%	1,746
36 Ngando	24.3	33,551	8,150	14,496,000	1.2%	1.2%	1,772
37 Dandora Area Ii	24.0	33,439	8,025	14,496,000	1.2%	1.2%	1,806
38 Kwa Reuben	29.3	25,967	7,603	14,496,000	1.1%	1.2%	1,967
39 Uthiru-Ruthimitu	22.4	32,204	7,227	14,496,000	1.1%	1.2%	2,006
40 Kariobangi North	17.4	39,081	6,784	14,496,000	1.0%	1.2%	2,137
41 Land Mawe	25.2	26,450	6,656	14,496,000	1.0%	1.2%	2,177
42 Mugumoini	14.8	44,766	6,605	14,496,000	1.0%	1.2%	2,195
43 Kwa Njenga	26.7	24,339	6,488	14,496,000	1.0%	1.2%	2,234
44 Dandora Area I	28.1	22,748	6,384	14,496,000	1.0%	1.2%	2,271
45 Kahawa West	21.5	29,488	6,336	14,496,000	0.9%	1.2%	2,288
46 Roysambu	15.6	58,230	5,974	14,496,000	0.9%	1.2%	2,427
47 Harambee	10.5	54,697	5,734	14,496,000	0.9%	1.2%	2,528
48 Mowlem	25.0	22,912	5,720	14,496,000	0.9%	1.2%	2,534
49 Kiamaiko	17.1	33,362	5,717	14,496,000	0.9%	1.2%	2,536
50 Kayole South	11.4	50,054	5,709	14,496,000	0.9%	1.2%	2,539
51 Lucky Summer	26.3	20,660	5,441	14,496,000	0.8%	1.2%	2,664
52 South C	11.6	46,958	5,435	14,496,000	0.8%	1.2%	2,667
53 Kahawa	21.7	24,997	5,422	14,496,000	0.8%	1.2%	2,671
54 Waitthaka	17.5	30,772	5,390	14,496,000	0.8%	1.2%	2,689
55 Pumwani	14.7	35,528	5,235	14,496,000	0.8%	1.2%	2,769
56 Matopeni/Spring Valley	33.6	14,895	4,999	14,496,000	0.7%	1.2%	2,900
57 Air Base	13.5	36,807	4,981	14,496,000	0.7%	1.2%	2,910
58 Karura	17.4	25,290	4,396	14,496,000	0.7%	1.2%	3,296
59 Kayole Central	8.5	50,580	4,295	14,496,000	0.6%	1.2%	3,375
60 Karen	14.2	29,022	4,130	14,496,000	0.6%	1.2%	3,510
61 Kariobangi South	12.4	32,985	4,099	14,496,000	0.6%	1.2%	3,536
62 Ruai	11.6	34,998	4,049	14,496,000	0.6%	1.2%	3,580
63 Kayole North	9.7	39,189	3,802	14,496,000	0.6%	1.2%	3,813
64 Umoja Ii	7.0	53,614	3,750	14,496,000	0.6%	1.2%	3,859
65 Mihango	17.1	20,956	3,584	14,496,000	0.5%	1.2%	4,045
66 Parklands/Highridge	9.4	37,380	3,510	14,496,000	0.5%	1.2%	4,130
67 Pangani	9.0	36,584	3,285	14,496,000	0.5%	1.2%	4,413
68 California	14.9	21,686	3,234	14,496,000	0.5%	1.2%	4,482
69 Nairobi West	10.1	31,403	3,173	14,496,000	0.5%	1.2%	4,569
70 Utawala	10.1	30,888	3,129	14,496,000	0.5%	1.2%	4,634
71 Embakasi	9.4	32,543	3,071	14,496,000	0.5%	1.2%	4,720
72 Maringo/Hamza	5.6	51,787	2,889	14,496,000	0.4%	1.2%	5,025
73 Eastleigh North	7.2	39,605	2,836	14,496,000	0.4%	1.2%	5,111
74 Kasarani	13.1	21,111	2,770	14,496,000	0.4%	1.2%	5,233
75 Umoja I	5.6	47,721	2,683	14,496,000	0.4%	1.2%	5,403
76 Woodley/Kenyatta Golf Course	7.4	31,550	2,322	14,496,000	0.3%	1.2%	6,243
77 Kileleshwa	8.8	26,327	2,305	14,496,000	0.3%	1.2%	6,289
78 Ngara	9.4	23,742	2,230	14,496,000	0.3%	1.2%	6,483
79 Kilimani	5.7	38,296	2,184	14,496,000	0.3%	1.2%	6,646
80 Komarock	5.7	35,571	2,025	14,496,000	0.3%	1.2%	7,144
81 Makongeni	6.3	30,961	1,951	14,496,000	0.3%	1.2%	7,422
82 Nairobi Central	16.9	10,573	1,791	14,496,000	0.3%	1.2%	8,094
83 Mutuini	8.4	17,776	1,502	14,496,000	0.2%	1.2%	9,651
84 Ziwani/Kariokor	11.2	9,613	1,074	14,496,000	0.2%	1.2%	13,472
85 Lower Savanna	3.3	30,633	1,022	14,496,000	0.2%	1.2%	14,184
Total		3,068,835	668,617	1,232,160,000	1.000	1.00	1,843
Range of Poverty Rate						23	

Table 3: Ward Allocations in Narok County Based on Population Without Access to Improved Sources of Water

			Equitable Share 2017/18	8,154,000,000			
			8% of the Equitable Share	652,320,000			
Ward	Unimproved Sources	Number of Individuals	Number of Individuals with Unimproved Sources of Water	Ward Allocations	Ward Share of Total Number of People with Unimproved Sources of Water	Ward Share of Total Allocation under the Bill	Per Capita Allocation
Kilgoris Central	79.5	41,630	33,104	21,744,000	5%	3%	657
Melili	89.9	36,685	32,968	21,744,000	5%	3%	660
Ilmotiok	68.6	46,006	31,541	21,744,000	5%	3%	689
Melelo	88.6	35,032	31,030	21,744,000	5%	3%	701
Maji Moto/Narok	78.7	39,385	31,007	21,744,000	5%	3%	701
Ololulunga	85.2	34,621	29,514	21,744,000	4%	3%	737
Lolgorian	85.7	34,135	29,261	21,744,000	4%	3%	743
Narok Town	64.1	44,573	28,562	21,744,000	4%	3%	761
Mara	80.2	32,741	26,255	21,744,000	4%	3%	828
Mosiro	93.9	27,064	25,415	21,744,000	4%	3%	856
Ilkerin	95.3	26,351	25,111	21,744,000	4%	3%	866
Olorropil	81.7	29,384	23,999	21,744,000	4%	3%	906
Sogoo	82.1	28,397	23,317	21,744,000	3%	3%	933
Kapsasian	95.6	23,402	22,364	21,744,000	3%	3%	972
Ma	69.1	32,114	22,179	21,744,000	3%	3%	980
Keyian	82.3	26,562	21,863	21,744,000	3%	3%	995
Angata Barikoi	87.1	24,803	21,611	21,744,000	3%	3%	1,006
Kimentet	90.4	22,436	20,272	21,744,000	3%	3%	1,073
Shankoe	70.9	27,981	19,850	21,744,000	3%	3%	1,095
Nkareta	90.7	20,175	18,302	21,744,000	3%	3%	1,188
Loita	77.0	22,601	17,398	21,744,000	3%	3%	1,250
Olokurto	82.5	21,033	17,359	21,744,000	3%	3%	1,253
Mogondo	93.4	17,578	16,425	21,744,000	2%	3%	1,324
Oloposimoru	79.8	19,878	15,864	21,744,000	2%	3%	1,371
Sagamian	73.8	20,917	15,444	21,744,000	2%	3%	1,408
Keekonyokie	75.1	20,514	15,402	21,744,000	2%	3%	1,412
Naikarra	68.3	22,324	15,248	21,744,000	2%	3%	1,426
Ildamat	93.0	15,609	14,509	21,744,000	2%	3%	1,499
Suswa	69.4	19,201	13,325	21,744,000	2%	3%	1,632
Oloimasani	47.2	26,527	12,513	21,744,000	2%	3%	1,738
Total		839,659.00	671,012.00	652,320,000.00	1.00	1.00	972
Range of Water Access					3		

Table 4: Ward Allocations in Mombasa County Based on Population Without Access to Improved Sources of Water

				Equitable Share 2017/18	6,523,200,000			
				8% of the Equitable Share	521,856,000			
Ward	Unimproved Sources	Number of Individuals	Number of Individuals with Unimproved Sources of Water	Ward Allocations	Ward Share of Total Number of People with Unimproved Sources of Water	Ward Share of Total Allocation under the Bill	Per Capita Allocation	
1	Kipevu	54.3	27,897	15,144	17,395,200	6.8%	3.3%	1,149
2	Tibwani	23.9	60,716	14,519	17,395,200	6.5%	3.3%	1,198
3	Port Reitz	41.9	33,613	14,076	17,395,200	6.3%	3.3%	1,236
4	Airport	44.8	29,243	13,106	17,395,200	5.9%	3.3%	1,327
5	Majengo	33.7	38,765	13,067	17,395,200	5.8%	3.3%	1,331
6	Frere Town	31.0	41,597	12,908	17,395,200	5.8%	3.3%	1,348
7	Mkomani	36.3	30,105	10,914	17,395,200	4.9%	3.3%	1,594
8	Junda	27.0	39,406	10,636	17,395,200	4.8%	3.3%	1,636
9	Ziwa La Ngombe	25.3	40,590	10,270	17,395,200	4.6%	3.3%	1,694
10	Mikindani	19.3	52,445	10,119	17,395,200	4.5%	3.3%	1,719
11	Tudor	32.6	30,785	10,049	17,395,200	4.5%	3.3%	1,731
12	Magogoni	33.8	28,745	9,721	17,395,200	4.3%	3.3%	1,789
13	Mtopanga	30.2	26,581	8,033	17,395,200	3.6%	3.3%	2,165
14	Chaani	26.0	29,830	7,748	17,395,200	3.5%	3.3%	2,245
15	Shanzu	21.2	36,035	7,633	17,395,200	3.4%	3.3%	2,279
16	Kongowea	21.7	33,000	7,146	17,395,200	3.2%	3.3%	2,434
17	Jomvu Kuu	19.1	36,589	6,983	17,395,200	3.1%	3.3%	2,491
18	Mjambere	25.0	27,094	6,787	17,395,200	3.0%	3.3%	2,563
19	Kadzandani	16.6	38,119	6,320	17,395,200	2.8%	3.3%	2,752
20	Bofu	19.7	28,928	5,699	17,395,200	2.6%	3.3%	3,052
21	Mtongwe	14.7	27,263	4,010	17,395,200	1.8%	3.3%	4,338
22	Tononoka	12.4	25,593	3,185	17,395,200	1.4%	3.3%	5,462
23	Bamburi	14.7	21,656	3,182	17,395,200	1.4%	3.3%	5,467
24	Miritini	11.6	25,830	2,989	17,395,200	1.3%	3.3%	5,820
25	Likoni	13.5	21,616	2,917	17,395,200	1.3%	3.3%	5,963
26	Shimanzi/Ganjoni	12.0	17,626	2,107	17,395,200	0.9%	3.3%	8,256
27	Shika Adabu	6.5	25,926	1,684	17,395,200	0.8%	3.3%	10,330
28	Mji Wa Kale/Makadara	6.2	25,109	1,568	17,395,200	0.7%	3.3%	11,094
29	Changamwe	4.6	10,792	497	17,395,200	0.2%	3.3%	35,000
30	Mwakirunge	5.3	8,627	458	17,395,200	0.2%	3.3%	37,981
Total			920,121	223,475	521,856,000	100.0%	100%	2,335
Range of Water Access						33		

Table 5: Sample of County Equitable Development Laws

County	Part of the budget to be shared by formula	Sharing mechanism
1 Elgeyo-Marakwet	100% Development Budget	60% Shared Equally and the remaining 40% shared as follows:- 1. Population 38% 2. County flagship projects 23% 3. Poverty index 22% 4. Land area 8% 5. Emergencies 5% 6. Fiscal responsibility 2% 7. Arid and semi-arid areas 2%
2 Baringo	10% Development Budget	1. Distributed based on a formula similar to the CRA formula. 2. 85% of the funds are allocated equally among wards the remaining 15% are then shared based on the wards share of the ward population, poverty levels and infrastructure needs.
3 Meru	22.5% of Ordinary Revenue	85% of the funds are allocated equally among wards; the remaining 15% are then shared based on the ward's share of the population per ward.
4 Nakuru	5% of the county ordinary revenue	85% of the funds are allocated equally among wards; the remaining 15% are then shared based on the ward's share of the population per ward.
5 West Pokot	31.1% of its approved annual development budget	Distributes the fund equally among the county's 20 wards.

Table 6: Proportion of Development Expenditure that would be implemented within Wards (2016/17)

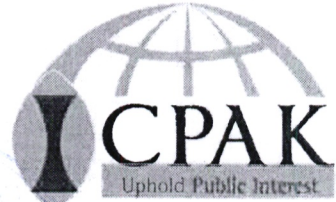
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County	Equitable Share (ES) 2016/17	Fund Allocation (8% of ES)	Development Expenditure 2016/17	Bill Proposal as a Proportion of Development Expenditure 2016/17
1 Taita Taveta	3,571,066,305	285,685,304	405,650,000	70%
2 Tharaka Nithi	3,385,474,466	270,837,957	546,720,000	50%
3 Vihiga	4,177,302,901	334,184,232	793,120,000	42%
4 Lamu	2,214,008,743	177,120,699	467,340,000	38%
5 Nyamira	4,482,799,531	358,623,962	979,210,000	37%
6 Bungorna	8,282,207,063	662,576,565	1,844,190,000	36%
7 Homa Bay	6,080,193,774	486,415,502	1,417,520,000	34%
8 Nakuru	8,757,624,645	700,609,972	2,049,830,000	34%
9 Nyeri	4,800,764,767	384,061,181	1,220,700,000	31%
10 Uasin Gishu	5,601,025,717	448,082,057	1,460,350,000	31%
11 Kajiado	4,761,279,539	380,902,363	1,250,400,000	30%
12 Kisii	7,654,114,597	612,329,168	2,014,890,000	30%
13 Nairobi	14,023,506,892	1,121,880,551	3,779,730,000	30%
14 Kirinyaga	3,817,781,963	305,422,557	1,083,540,000	28%
15 Bomet	5,078,797,925	406,303,834	1,491,950,000	27%
16 Migori	6,298,037,918	503,843,033	1,869,610,000	27%
17 Baringo	4,791,438,190	383,315,055	1,466,300,000	26%
18 Trans Nzoia	5,502,547,171	440,203,774	1,711,190,000	26%
19 Kiambu	8,053,256,819	644,260,546	2,510,490,000	26%
20 Meru	7,006,680,257	560,534,421	2,238,990,000	25%
21 Kisumu	6,130,158,037	490,412,643	1,982,570,000	25%
22 Samburu	3,832,957,535	306,636,603	1,263,840,000	24%
23 Elgeyo/Marakwet	3,528,847,275	282,307,782	1,167,670,000	24%
24 Busia	5,870,097,209	469,607,777	1,963,610,000	24%
25 West Pokot	4,654,529,143	372,362,331	1,565,650,000	24%
26 Nandi	5,130,819,903	410,465,592	1,803,760,000	23%
27 Murang'a	5,779,189,434	462,335,155	2,037,430,000	23%
28 Nyandarua	4,647,384,382	371,790,751	1,642,720,000	23%
29 Siaya	5,389,991,057	431,199,285	1,983,350,000	22%
30 Kwale	5,530,693,069	442,455,446	2,056,690,000	22%
31 Narok	5,705,712,796	456,457,024	2,150,670,000	21%
32 Isiolo	3,298,073,210	263,845,857	1,266,240,000	21%
33 Garissa	6,227,726,513	498,218,121	2,442,060,000	20%
34 Tana River	4,299,401,839	343,952,147	1,779,130,000	19%
35 Laikipia	3,722,107,269	297,768,582	1,547,090,000	19%
36 Kericho	4,861,021,577	388,881,726	2,022,500,000	19%
37 Machakos	7,303,463,454	584,277,076	3,343,570,000	17%
38 Kitui	7,841,480,359	627,318,429	3,688,650,000	17%
39 Wajir	7,804,219,087	624,337,527	3,688,780,000	17%
40 Mombasa	5,608,593,922	448,687,514	2,743,150,000	16%
41 Marsabit	5,599,495,638	447,959,651	2,791,750,000	16%
42 Embu	4,141,186,056	331,294,884	2,099,160,000	16%
43 Kakamega	9,612,093,313	768,967,465	5,208,760,000	15%
44 Turkana	11,307,010,771	904,560,862	6,159,910,000	15%
45 Kilifi	8,029,167,703	642,333,416	4,473,130,000	14%
46 Mandera	9,663,318,677	773,065,494	5,831,480,000	13%
47 Makueni	6,441,351,588	515,308,127	4,036,530,000	13%
Total	280,300,000,000	22,424,000,000	103,341,530,000	22%

Our Ref: ICPAK/CEO/04/2018

17th April 2018

Mr. Jeremiah M. Nyegenye
Clerk of the Senate
Clerks' Chambers
Senate
Parliament Buildings
P.O Box 41842-00100
NAIROBI



① DCom

Kindly bring to the attention of the Committee.

EG
18/04/18

Dear *Mr. Nyegenye,*

RE: SUBMISSION OF MEMORANDA – COUNTY WARDS DEVELOPMENT EQUALISATION FUND BILL 2018

The Institute of Certified Public Accountants of Kenya (ICPAK) is the statutory body of accountants established by the Accountants Act of 1978, and as repealed under the Accountants' Act Number 15 of 2008, mandated to develop and regulate the Accountancy Profession in Kenya. It is also a member of the International Federation of Accountants (IFAC), the global umbrella body for the accountancy profession.

Your public notice inviting interested members to submit written memorandum on the County Wards Development Fund Bill 2018 refers.

The Institute of Certified Public Accountants of Kenya (ICPAK) has reviewed the Bill and developed a position paper detailing its proposals for your consideration. Attached herein, please find a copy of the Institute's submission.

In case of need for clarification, please do not hesitate to contact the undersigned on ceo@icpak.com or CPA Fredrick Riaga on fredrick.riaga@icpak.com.

Looking forward to your response and continued collaboration.

Yours *Faithfully*

② Clerk Assistant
Finance Committee

for CPA Edwin Makori
CHIEF EXECUTIVE OFFICER

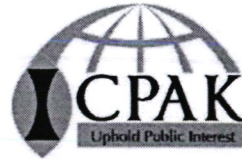


please deal
19/4/18

Institute of Certified Public Accountants of Kenya
CPA Centre, 10th Floor, Ruaraka, Thika Road
P.O. Box 59963 - 00200
Nairobi Kenya

Tel: +254 (020) 2304226, 2304227
Cell: +254 727 531006 / 733 856262
+254 721 469796 / 721 469169

Web: www.icpak.com
Drop in box no. 164
Revlon Professional Plaza



ICPAK SUBMISSION ON THE COUNTY WARDS DEVELOPMENT EQUALISATION FUND BILL, 2018

APRIL 2018

Background Information

The Institute for Certified Public Accountants of Kenya (ICPAK) welcomes the initiative to decentralize development through the County Wards Development Fund Bill 2018. The Bill seeks to provide a framework for the determination of projects that are to be implemented through the Fund by the county governments and an oversight mechanism to ensure the efficient and proper use of the funds and implementation of the projects.

We hold the opinion the objects of the draft Bill are well defined to address the haphazard push by counties to establish these funds. It will the policy and legislative framework to devolve resources to the ward level in an equitable manner to meet the socio-economic objectives of poverty alleviation and infrastructural development.

However, it's worth noting that similar initiatives driven by individual county assemblies have been met with resistance. This owes much to the precedence set earlier challenging the constitutionality of the Constituency Development Fund which is premised on similar foundations and principles. As we debate this Bill, there is need to take cognizance of issues around duplicity of functions with other funding initiatives already set out through other funding mechanisms. The question would be how to integrate this fund to address possible duplicity of funding arrangements at the counties. It is equally important that right at the onset, we address the perceived conflict that has defined the participation by elected officials in the management of such funds, the case in point the National Government CDF. We should therefore ensure that the principle of separation of mandates between executive and oversight roles are adequately addressed.

Nevertheless, the Bill once enacted will achieve the following:

- (i) Guarantees at least Kshs. 20 billion is allocated to development expenditure at the ward level. This will support implementation of the fiscal responsibility principle on at least 30% of the budget allocated to development expenditure
- (ii) Deals with intra-county inequality and marginalization: Through allocation of at least 8% of the share of county revenue to this fund, all wards in any given county will be guaranteed of flow of funds to support community initiatives and projects.

The Institute of Certified Public Accountants of Kenya (ICPAK) has reviewed the Bill and developed a position paper detailing its proposals for your consideration.

Table: Summary of the proposals on the County Wards Development Equalisation Bill 2018

Clause		Provision in the Bill	Issue of Concern	Proposed Amendment	Justification
1.	General comments: Deal with any potential duplicity or overlaps	Due to the large number of funds created at the local level, there has been lack of clarity on administration and implementation leading to overlap of roles and responsibilities. The multiplicity of funding channels for local service delivery and development has following effects: (i) Imposes high administration and transaction costs; (ii) Leads to lack of comprehensive and composite planning and organization of the development projects at the local level; (iii) Results to fragmentation of resources and duplication of projects thus undermining the service delivery and developmental objectives of the funding.		To avoid overlap in the responsibilities, the Institute proposes the need for integrating prioritization of activities/projects under the County Ward Development Fund to be in line with the fund with the County Integrated Development Plans(CIDPs) ¹ ;	To deal with duplicity at the local level
2.	Title	“The County Ward Development Equalisation Fund Bill”	The use of “Equalisation” limits the application of the Bill to marginalized counties only as stipulated by Article 204 of the constitution and as classified by the CRA Policy on Marginalization The term “equalization” is further left in subsequent clauses i.e Clause 5.	Delete “Equalisation” from the title to read <i>“The County Wards Development Fund Bill 2018”</i>	To allow it’s applicability to all 47 Counties

¹ One of the objectives of county planning is to ensure harmony between national, county and sub-national spatial planning requirements- Section 103-County Government Act

Clause		Provision in the Bill	Issue of Concern	Proposed Amendment	Justification
3.	Part III: Establishm ent of the Board	The Bill establishes the Board to administer the fund in the respective county	There's a danger in this Board bypassing structures already established through the County Government Act	Consider using the current structures (County Government Act 2012) in administering the Fund, that is, <ul style="list-style-type: none"> ▪ Office of the Sub-county administrator ▪ Office of the Ward administrator ▪ Office of the Village Administrator 	<ul style="list-style-type: none"> ▪ The County Government Act has already established further decentralized units ▪ Creation of a new Board with attendant staff could have serious cost implications
4.	Clause 8(4)	Unspent funds shall be allocated to any eligible project and such project may be new or ongoing at the end of the financial year	Though this is a good provision, it might be exploited to allocate such funds to recurrent expenditure	Amend by inserting the term "capital" to read, <i>"Unspent funds shall be allocated to any eligible capital project and such project may be new or ongoing at the end of the financial year"</i>	To curb against allocating any unspent funds to recurrent expenditure
5.	Clause 17(1)	The Bill provides Composition of the Board	It is not clear which position the Bill refers to under the County Government structure in 17(a) and 17(b), that is, <i>"The Chief Executive Officer"</i> If it referred to the County Executive Committee member or Chief Officer, then there could be challenges in cases where one of the above officers' discharges both economic policy and planning; and matters finance	Amend by providing clarity on the position of Chief Executive Officer	For clarity in constitution of the Board
6.	Clause 21: The Fund Manager	The Bill creates the position of the Fund Manager to support	It fails to recognize the importance of professional body affiliation to ethical practices in management.	Amend Clause 21(2) to read, "A person qualifies for appointment under subsection	Professional accountants play an important role in

Clause	Provision in the Bill	Issue of Concern	Proposed Amendment	Justification	
		implementation of the Fund	This position being critical to the overall management of the Fund should have been reserved to members of ICPAK in good standing.	(1) if such person has a degree in finance, accounting, economics, engineering, community development or relevant field from a university recognized in Kenya and a member of the Institute of Certified Public Accountants of Kenya(ICPAK) in good standing	ensuring quality financial management essential for accountability and financial stability of any given entity
7.	Part V Project Proposal & Implementation Committee	The Bill establishes for each ward, a Committee known as the Project Proposal and Implementation Committee	In as much as we appreciate the Ward level Project Committee, the Bill fails to create avenues for establishment of project implementation committees per project initiated by the community.	Include provisions on Project Committees per project. Insert a new Clause 35: Project Committees <i>"Projects under this Act shall be implemented by a specific project management committee appointed by the relevant department of the County Government"</i>	This is essential in supporting monitoring & ensuring ownership of the projects by the beneficial community)
8.	Clause 52(4) Regulations	Provisions on Regulations	The Bill erroneously provides that the absence of regulations shall not hinder implementation of this legislation. This may in fact hamper smooth implementation since regulations elaborate on the finer details of the law.	Delete 52(4)	Regulations are important in providing details for the implementation of any given law.

COUNTY WARDS DEVELOPMENT EQUALIZATION BILL 2018

Brief by the National Treasury to the Senate on April 18th, 2018

1. Introduction

The Senate has published the County Wards Development Equalisation Bill 2018 (Senate Bill No. 5 of 2018) which was read a first time on 29th March 2018. Consequently, the Bill was committed to the Standing Committee on Finance and Budget for consideration pursuant to standing order 134 of the standing orders of the Senate. The National Treasury has been invited to make presentation before the committee on 18th April 2018 at 12.00 Noon.

2. Objectives of the Bill

The objectives of the Bill are:

- i) to provide for the equitable development in each ward;
- ii) to provide a mechanism for the identification of priority projects in each ward;
- iii) to promote the decentralization of functions and provision of services by county governments to the extent that it is efficient and practicable pursuant to Article 176 of the Constitution;
- iv) to ensure equitable sharing of resources within the county;
- v) to provide a mechanism through which the county governments are able to promote the interests of marginalized communities within the respective wards in accordance with Article 43 of the Constitution; and
- vi) to provide a framework for the participation of residents in each county with respect to the application of resources and the identification and implementation of projects through monies obtained from the resources allocated

3. National Treasury comments on the Bill

The National Treasury has reviewed the Bill and wishes to make the following comments on the Bill:

3.1 The Bill offends provisions of the Constitution and the Public Finance Management Act of 2012 on the powers/responsibilities to establish County Public Funds.

Article 207(4) (b) of the Constitution provides as follows:

'An Act of Parliament may provide for the establishment of other funds BY COUNTIES and the management of those funds'

The Section 116 (1) of the PFMA provides as follows:

'A County Executive Committee member for finance may establish other county public funds with the approval of the County Executive Committee and the county assembly'

Section 5 of the Bill proposes to establish in each county a county ward development fund.

This is clearly in conflict with the provisions of the Constitution and PFMA. The Constitution contemplates that the Funds are to be established BY COUNTIES and therefore any national legislation that proposes to establish a county public fund would be in conflict with Article 207(4) of the Constitution and Section 116 of the PFMA.

3.2 The Bill claws back on the fiscal powers of the County Governments to plan, budget, spend and report on the equitable share of revenue allocated to county governments pursuant to Article 202 and 203 of the Constitution.

Section 5 (2)(a) proposes to allocate at least 8 % of the share of revenue allocated to the respective county government to the Fund (It is not clear whether it is 8% of equitable share or total revenue allocated to counties). It should also be noted that Article 203(2) provides for the allocation of an equitable share of revenue raised nationally to county governments of not less than 15 percent of the last audited revenue collected by the national government. This is an unconditional allocation to be shared among County Governments in accordance with the formula for sharing revenue approved by Parliament under Article 217 of the Constitution. Since this is an unconditional allocation, County Governments are expected to plan, budget, spend and account for the funds allocated independently. By providing for a formula for sharing the revenue among sub-units of the counties, the Bill takes away the fiscal powers of the county governments to determine the allocation of resources among the various county governments' needs.

3.3 The Bill will potentially water down the development planning framework established under the County Governments Act of 2011 and the PFMA of 2012.

The enactment of the Bill in its current form will effectively render the County Integrated Development Plan (CIDP) useless. Section 108 of the County Government Act of 2011 requires each County Government to prepare a CIDP. The essence of CIDP is to identify priority projects as well as the financial plan for the medium to long term period. In Section 49 (2) (Page 27) of the Bill county government development

allocations shall continue alongside the projects funded under this Act. This will lead to duplication and double allocation hence waste of public funds. The CIDPs also schedules the implementation of the projects across all the sub-units of the county governments over the term of the CIDP. The scheduling of project is done because resources available to the county governments in one financial year may not be adequate to finance the development projects/programmes in all the sub-units of the counties. The annual County Fiscal Strategy Papers and the budgets are then supposed to be aligned to the CIDPs. The Bill seems to disregard this planning framework set out in law. It should be noted that the PFM (County Governments) Regulations of 2015 requires **'the County Executive Member responsible for the entity shall demonstrate how the activities of the proposed County Public Fund will fit in the overall Medium Term Plan (read CIDP) and County Fiscal Strategy Paper'**. The Bill does not elaborate how this requirement will be met.

- 3.4 The Bill by spreading the resources of the County Governments thinly across the county wards will reduce the capacity of the County Governments to finance priority large scale projects which transcend more than one ward and with higher socio-economic impact.**

It should be noted that distribution of county resources across the wards in the proposed manner could result in the spreading of county resources too thinly to an extent where county governments are not able to implement large scale projects within counties that may benefit from huge economies of scale and generate huge positive externalities.

- 3.5 The Bill in its current form will further entrench inequalities by treating unequal regions equally.**

Section 8 of the Bill proposes to allocate monies from the Fund equally to all the wards in the respective county each financial year. Evidence available shows that levels of economic development vary from ward to ward. To allocate funds equally among counties would in effect reverse the gains from the programs implemented through the Equalisation Fund framework and other national and county government initiatives aimed at reducing inequalities. This provision is also in conflict with a key principal of public finance set out in Article 201(b) which requires public finance system to promote an equitable society and in particular paragraph (iii) which states as follows: ***'expenditure shall promote the equitable development of the country, including by making special provision for marginalized groups and areas'***.

- 3.6 The Bill is likely to result in duplication of effort/double allocation of funds, ultimately leading to wasteful spending of public funds.**

Article 204 of the Constitution establishes Equalisation Fund as a mechanism for addressing inequalities across all regions of Kenya. By establishing another Fund at the county level without a master plan on how such initiatives would be coordinated to ensure optimal results for the citizens will ultimately result in duplication of effort and possibly wasteful spending. A better alternative would be to develop a master plan the anchors all development initiatives that seek to address inequalities which then guides planning and budgeting at both levels of government.

*Master plan
to address
inequalities*

3.7 The Bill does not explain whether it has complied with the requirements for establishing county public funds set out in PART XV of the PFM (County Governments) Regulations of 2015.

The memorandum attached to the Bill does not explain how the requirements for establishing county public funds set out in PART XV of the PFM (County Governments) Regulations of 2015 will be fulfilled. For example, there is no evidence provided to confirm that the activities to be financed could not be funded through the normal budgetary process.

3.8 The Bill gives the County Ward Development Board powers to borrow without making reference to the Constitutional and PFMA provisions on borrowing by county governments.

Section 14 (2) (c) of the Bill gives the proposed agency of the County Government, that is, the County Ward Development Board powers to borrow. According to the Constitution and the PFMA county governments and its entities cannot borrow without a guarantee from the National Government.

4. Conclusion

In summary, counties are distinct and self-governing units and therefore once the equitable shares are allocated to them in accordance with the formula for sharing resources approved by Parliament under Article 217 of the Constitution, national government must leave it to them (county governments) to execute the projects according to their own plans. As demonstrated above, the Bill offends several provisions of existing legislation, that is, PFMA, County Governments Act. In light of the foregoing, it is proposed that the Bill be withdrawn.



Tel: 254 (20) 4298000
Email: info@crakenya.org
Website: www.crakenya.org



14 Riverside Drive
Grosvenor block
2nd Floor
P.O. Box 1310 – 00200
NAIROBI

COMMISSION ON REVENUE ALLOCATION

OUR REF: CRA/3/Vol.5(21)

DATE: 18th April 2018

J.M Nyegenye, CBS
Clerk of the Senate
Parliament Buildings
Nairobi

Dear Mr Nyegenye,

**RE: COMMENTS ON COUNTY WARDS DEVELOPMENT
EQUALIZATION FUND BILL**

Reference is made to your letter dated 9th April 2018, Ref: SEN/SCF&B/CORR/2018/26 inviting the Commission to the Senate Standing Committee on Finance and Budget to discuss the County Wards Development Equalization Fund Bill.

Attached please find comments from the Commission on the bill.

Yours

Sincerely

Dr. Jane Kiringai
CHAIRPERSON



18th April 2018

**RE; COMMENTS ON THE COUNTY WARDS DEVELOPMENT
EQUILISATION FUND BILL, 2018 (SENATE BILLS NO. 5 OF 2018)**

The Commission wishes to make the following comments on The County Wards Development Equilisation Fund Bill, 2018

OVERVIEW

The role of the Senate in Article 96 provides that Senate determines the allocation of nationally raised revenue among counties and exercises oversight over national revenue allocated to the county governments. Section 107 of the Public Finance Management (PFM) Act 2012 on fiscal responsibilities principles requires that, over the medium term, a minimum of thirty percent of the county governments budget shall be allocated to development expenditure. From the expenditure reports over the last four financial years, a number of counties particularly the cities (Nairobi, Nakuru and Kisumu) have found it difficult to achieve this owing to high wage bills. CRA would recommend dealing with the wage bill in order to free fiscal space for all counties to be able to achieve the 30% development expenditure target.

The bill as drafted may raise concerns on duplication of expenditure leading to higher recurrent spending and consequently making it difficult for counties to maintain the PFMA threshold a minimum of 30% development expenditure. All funds allocated to the County Wards Development Equalisation Fund should be used for development projects only so as to ensure adherence to principles of fiscal responsibility at the county level.

The Commission carried out an exercise that analyzed the effect of the bill to the current financial management in the counties and established that under the current setup, only 31 of the counties would achieve the required 30% with 8% of its equitable share transferred directly to a ward development fund.

Based on the Division of Revenue Act 2018 which allocates to the counties an equitable share of Kshs. 314 Billion, a cumulative amount of Kshs. 25.12 Billion would be allocated to the Ward Development Funds with amounts ranging from Kshs. 12.5 Million per ward in Kiambu to Kshs. 31.5 million per ward in Isiolo. The per capita allocation is also as varied ranging from Kshs. 170 per capita in Kamenu, Kiambu county to Kshs. 27,005 per capita in Basuba, Lamu County. This is to address Section 8 on allocating funds equally. We therefore need to take into consideration adjustment for population for intra-county allocations.

The Commission is concerned that there is no criteria that counties use to allocate funds to the wards. Subsequently, this has led to re-centralization with some wards being side-lined.

In as much as the Commission agrees that there is need to have an impact in counties by setting funds to eliminate material differences, we also believe that we can use alternative methods that does not lead to duplication of other efforts by both levels of government or create a parallel structure for development in the county.

The Commission therefore recommends

1. That we minimize the fund structure and, (section 17)
2. That we provide specific projects that are pertinent to the wards, but did not make it to the overall county budget. (section 3)
3. Delete other investments and borrowing as this may open the fund up for use that is not in line with the fund objective (section 14)

Specific recommendations

Having said so, please find below our recommendations:-

1. Section 2: -INTERPRETATION CLAUSE

Insert additional words “For the purpose of this fund and project implementation, the definition of Community shall be limited to mean residents ofinterests;

CRA Observation

The Community Land Act provides for a definition of Community too.

2. Section 4: -GUIDING PRINCIPLES

Delete the ‘paragraphs’ (b) and (c)

Insert Article 174 (g)- (a) ‘To ensure equitable sharing of national and local resources throughout Kenya

CRA Observation

- a) Those deleted areas can be delivered through the normal structures of budgeting in the counties.
- b) Adhere to section 116 of the PFM and the County PFM regulations pertaining to setting up funds that address areas of development which are not in the County budget

3. PART II: ESTABLISHMENT OF THE COUNTY WARD DEVELOPMENT FUND

The title should be like the bills’ i.e. “Establishment of the County Wards Development Equalisation Fund”

CRA Observation

Maintain consistency in the bill

4. Section 5: (2)

Review 8% of the equitable share

CRA Observation

Consider the fiscal strain considering recurrent expenditure by towns and cities as per CRA analysis

5. Section 8(1): Allocation of funds

Subsection (1) delete “allocate funds equally” and substituting therefore the paragraph—

"equitably according to CRA recommendations to all wards in the respective..... Act.”

CRA Observation

This will allow wards to receive funds as required by the criteria spelled out in Article 203

6. Section 11: BOOKS OF ACCOUNTS

Insert the word ‘quarterly’ after the words ‘returns made’

CRA Observation

Adhere to PFM regulations on periodic returns by county funds.

7. PART III -ESTABLISHMENT OF THE COUNTY WARD DEVELOPMENT BOARD

Review the title ‘Establishment of the County Wards Development Equalisation Fund Board’

CRA Observation

Maintain Consistency in the bill

8. Section 14(2)

Delete (b) and (c)

CRA Observation

The fund is for a specific function.

9. Section 16: Powers of the Board

Delete section

CRA Observation

This defeats the purpose of the Board. It should be for a specific function. These powers should be left with the county government

10. Section 17 (c): Composition of the Board

Delete section. Insert “three persons appointed from the county government including the Ward Administrator”

CRA Observation

Members of the Board should emanate from already employed government officials to reduce administrative costs.

11. Section 17 (d):

Delete section

CRA Observation

Adhere to section 116 (12) PFM whereby an administrator of a county public fund is designated y CECM Finance from the department in the county executive. This saves more funds for development expenditure. Example is the Equalization Fund Board Administrator.

12. Section 18 (3): Conduct of the Business and affairs of the Board

Insert ‘for Finance’ after the word ‘member’

CRA Observation

Adhere to PFM

13. Section 21 (1) and (4): The Fund Manager

Delete section

CRA Observation

Adhere to section 116 (12) PFM whereby an administrator of a county public fund is designated by CECM Finance from the department in the county executive. This saves more funds for development expenditure. Example is the Equalization Fund Board Administrator

14. Section 22: Staff of the Board

Delete section

CRA Observation

The secretariat should be drawn from the county department.

15. Section 23: Finances of the Board

Delete section

CRA Observation

Repetition of Clause 10 on administrative costs

16. Section 25(2): Projects Account

Insert 'be' after the word 'shall'

CRA Observation

Typo error

17. Section 26(1) Funding of Projects

Delete 'and may include the acquisition of land'

CRA Observation

Land acquisition to be left for the County government.

18. Section 28 (3) and (4): Establishment of the Committee

Delete section

CRA Observation

Draw members from already existing county officials who are non-executive to reduce administrative costs

19. Section 28 (11): Term in the office

Delete 'two' and substitute with 'three'

CRA Observation

Maintain consistency in the bill on terms of engagement.

20. Section 28 (14): Conduct of meetings

Delete 'at least six' and replace with 'maximum 12'. Delete subsequent words 'but it shall not hold more than thirty-six meetings in the same financial year, including sub-committee meetings.'

Replace with 'hold at least one meeting per quarter.'

CRA Observation

Reduce administrative costs

21. Section 29 (11): Functions of the Committee

Delete 'Board' and replace with 'Committee' in the entire section.

CRA Observation

Align functions to those of the Committee in this section

22. Section 32(1): Project Co-ordinator

Delete 'who shall be competitively recruited by the County Public Service Board' and replace 'who shall be a county officer from the department implementing the project'

CRA Observation

Reduce administrative costs

23. Section 36(1): Submission of deadline

Delete 'September' and replace with 'January' to align with mid-term expenditure in the budget process.

CRA Observation

Reduce administrative costs

24. Section 38: Discretion of the Committee

Delete entire section

CRA Observation

The Board allocates funds. Not the Committee.

25. Section (43): Record of receipts and disbursements

Delete 'monthly' and replace with 'quarterly'

CRA Observation

Align with PFM

26. PART VII -COUNTY ASSEMBLY SELECT COMMITTEE

Rename title to 'County Fund Assembly Oversight Committee'

CRA Observation

County assembly to oversight the fund implementation.

27. Section 46(3): Tenure in office

Delete 'three years renewable' and replace with 'the life of the parliament'

CRA Observation

Reduce administrative costs

22. Section 46(5)(a): Reporting by County assembly

Delete 'two' and replace with 'one'

CRA Observation

Adhere to PFM

23. SCHEDULES

First Schedule: Section 8(5)

Delete 'Re' and leave as 'Allocation'

CRA Observation

Revise the form. It should be a form containing all the ward allocations

Third Schedule: Section 35(1)

Reword the title to read 'Project identification and financing'

CRA Observation

List all projects identified with finances assigned.



COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

18 APR 2018
Tel : (020) 2403314, 2403313
+254 729 777 281
E-mail: info@cog.go.ke

Ref. COG/ 6/10 Vol. 5 (72)

18th April 2018

J. M. Nyegenye, CBS
Clerk of the Senate
P.O. Box 41842-00100
Parliament Buildings
NAIROBI

URGENT

① D Com
Kindly bring to
the attention of
the Committee.
EP
18/04/18

Dear Mr. Nyegenye

INVITATION TO ATTEND A MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET

Reference is made to your letter dated 9th April, 2018 referenced SEN/SCF&B/CORR/2018/24 on the above referenced subject which was received on the 13th April 2018.

The Council respects and appreciates the Senate's role with regards to protecting the interests of County Governments as stipulated in the Constitution. To this end the Council has reviewed the County Wards Development Equalization Fund Bill (Senate Bills No. 5 of 2018) and has developed a memorandum to submit before the Senate Committee on Finance and Budget for consideration.

The purpose of this letter is therefore, to officially submit the Council's Memorandum on the Bill for consideration.

Yours sincerely

Jacqueline Mogeni
Chief Executive Officer

② Clerk Assistant
Finance Committee
Please deal
19/4/18

Copy: All Excellency Governors



COUNCIL OF GOVERNORS

**LEGISLATIVE MEMORANDUM ON COUNTY WARDS DEVELOPMENT EQUALISATION FUND
BILL, 2018**

**To
THE SENATE**

**From
THE COUNCIL OF GOVERNORS**

MEMORANDUM ON THE COUNTY WARDS DEVELOPMENT EQUALISATION FUND BILL, 2018

The Council of Governors,

In recognition of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

In further recognition of Article 6 (2) that governments at the national and county levels are distinct; and

Aware of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution.

The Council hereby notes as follows on the County Wards Development Equalisation Fund Bill, 2018:

Section	Provision	CoG's proposal	Rationale/Justification
Title	County Wards Development Equalisation Fund Bill, 2018	County Wards Development Fund Bill, 2018	The Bill is unconstitutional in its entirety however if it needs to be amended then the proposal is as provided. As a form of equalization, the Constitution under Article 204 has already established a Fund for equalization across the Country.
Section 3 Objects and purposes of the Act.	The objects and purposes of this Act are to— (a) provide for the equitable development in each ward; (b) provide a mechanism for the identification of priority projects in each ward; (c) promote the	The objectives laid out in the Act should be reviewed or deleted.	Allocations to counties are already made based on an equitable formula approved by the Senate. To expose the allocations further other formulas through established funds will lead un coordinated and un-effective service delivery processes.

	<p>decentralization of functions and provision of services by county governments to the extent that it is efficient and practicable pursuant to Article 176 of the Constitution;</p> <p>(d) to ensure equitable sharing of resources within the county;</p> <p>(e) provide a mechanism through which the county governments are able to promote the interests of marginalized communities within the respective wards in accordance with Article 43 of the Constitution; and</p> <p>(f) provide a framework for the participation of residents in each county with respect to the application resources and the identification and implementation of projects through monies obtained from the resources allocated.</p>		<p>County development agenda are carried out through the prioritization of programmes in the CIDPs, Annual Development Plans which are elaborately discussed. Funds are also allocated on priority and needs of the residents. To establish a Fund that sorts to further reallocate the County funds as a mandatory obligation will be unconstitutional.</p>
<p>Section 5 Establishment of the Fund.</p>	<p>The Fund shall comprise of—</p> <p>(a) at least eight percent of the share of revenue allocated to the respective county government for the respective year;</p> <p>5 (3) The Controller of Budget shall</p>	<p>5 (3) The Cabinet Secretary shall not authorize withdrawal of monies under Article 207 of the Constitution where a county fails to comply with the provisions of this Act.</p>	<p>It is unconstitutional to provide through legislation the reallocation of counties' funds especially on jurisdictions that fall within the county governments geographical boundaries. Wards are decentralized units of county governments, and</p>

	<p>not authorize withdrawal of monies under Article 207 of the Constitution where a county fails to comply with the provisions of this Act.</p>		<p>hence any development with regards to the Wards are done through the County Executive as approved by the County Assemblies. The Constitution is very explicit on what makes up the counties and how development programmes are supposed to be undertaken through the respective planning processes.</p> <p>The Controller of Budget has no mandate to halt withdrawal of funds to the Counties. Article 225 of the Constitution expressly states that the authority to stop transfer of funds to counties is vested with the Cabinet Secretary for finance of which the threshold for stoppage of the funds has been highlighted in the same article and is not as simple as the proposed bill tends to provide.</p>
<p>Section 6 Disbursements from the Fund.</p>	<p>6 (1) All disbursements from the Fund shall be—</p> <p>(a) approved by the respective Board and recorded in the minutes of the Board;</p> <p>(b) for specific projects as submitted by the Committee in accordance with the procedures outlined in this Act.</p>	<p>The section should be deleted</p>	<p>County projects are done through the County projects framework. The Section therefore negates from the principle of autonomy as provided for in the Constitution.</p> <p>The fund it all it needs to exist should be administered through the County Treasury. This is because the County Treasury is the institution that is involved with disbursement</p>

			of county funds to all the respective County units. This will also reduce the administrative costs that will be leveled against the Fund.
Section 7 Bank Account of the Fund.	<p>7 (1) There shall be opened and maintained an account approved by the county treasury into which all funds allocated to the wards under section 5(2) shall be deposited for the purpose of disbursements under this Act.</p> <p>7 (2) The signatories to an account under subsection (1) shall be the fund manager and three other persons appointed by the Board from amongst its members.</p>	<p>Section 7 (1) to be amended to read, "There shall be opened and maintained an operational bank account approved by the county treasury into which all funds allocated to the wards under section 5(2) shall be deposited for the purpose of disbursements under this Act.</p> <p>Section 7 (2) to be amended to read, "The signatories to an account under subsection (1) shall be the Accounting officer responsible for the County Treasury, Fund manager and two other persons appointed by the Board from amongst its members.</p>	The section should explicitly provide that the bank account is an "operational" account of which the accounting officer of the County Treasury should be a member.
Section 8 Allocation of funds.	8 (1) The county executive committee member shall, with the approval of the respective county assembly, allocate funds equally to all the wards in the respective county in each financial year in accordance with this Act.	Amend section 8. (1) to read "The county executive committee member shall, with the approval of the respective county assembly, allocate funds equitably to all the wards in the respective county in each financial year in accordance with this Act."	The section contradicts with the objectives of the Act which seeks to ensure equitable sharing of resources. In order to ensure consistency with the objectives, funds should be allocated equitably and not equally. Ultimately when allocated equitably, this will mirror or duplicate what the County

	<p>(4) Unspent funds shall be allocated to any eligible project and such project may be new or ongoing at the end of the financial year.</p> <p>(5) A return as set out in the First Schedule shall be made for the current financial year and every previous financial year on which funds remain unspent.</p>	<p>Amend section (4) to read “Unspent funds shall be re-allocated to any eligible project and such project may be new or ongoing at the end of the financial year.</p> <p>(5) refund statement as set out in the First Schedule shall be made for the current financial year and every previous financial year on which funds remain unspent.</p>	<p>governments are already doing through the programme based budgeting process which is based on county priorities across all the geographical area. This therefore confirms the unconstitutionality of the legislation.</p> <p>The section should be clear that the any unspent monies shall be re-allocated to be utilized in other projects.</p> <p>The section should also place emphasis on the “refund” statement as this is how the PFMA refers to it.</p>
<p>Section 10</p> <p>Administration expenses.</p>	<p>The Board shall set aside a sum not exceeding one percent of the total allocation for the project to cater for its administration expenses.</p>	<p>Delete the entire section. There should be a board to manage any County Funds. The fund can be managed through the County Treasury.</p>	<p>For purposes of austerity measures and respecting the principles of Public Finance as provided for in Article 201 of the Constitution and section 107 of the PFM Act, the fund should be administered by the County Finance Treasury to avoid establishment of structures that will not add value to the Counties but spend money which would otherwise be used for other programmes.</p>
<p>Section 12</p> <p>Audit</p>	<p>12 (2) The Auditor-General shall submit a report under subsection (1) to the Senate for consideration</p>	<p>Amend the Section to read, “The Auditor-General shall submit a report under subsection (1) to the County Assembly for consideration”</p>	<p>The funds shall be allocated to each ward in every county. Therefore the report should be submitted to the County Assembly and not the Senate as the Assemblies are first</p>

			point of reference with regards to oversight of counties expenditures. The role of the Senate should be well be defined to only involve circumstances where the County Assemblies are unable to undertake their constitutionally mandated roles.
Section 13 Ward Account	13 (9) All unutilized funds shall remain in the ward account and no investment elsewhere shall be permitted, provided that funds meant for a project that is cancelled or discontinued shall be returned to the ward account in accordance with subsection 8.	Amend section 13 (9) to read “All unutilized funds shall refunded back to the Fund Account at the end of the financial year to allow for re-allocation in the subsequent financial year.”	The Bill should be explicit to provide that the Fund is a revolving fund and hence all unspent funds in the wards shall be refunded back into the main Fund account for subsequent re-allocation. The Council however still maintains that the Bill in its entirety is unconstitutional.
Section 17 Composition of the Board.	17. (1) The Board shall consist of — (a) the chief executive officer in the department for the time being responsible for matters relating to county economic policy and planning; (b) the chief executive officer in the department for the time being responsible for matters relating to finance;	Amend section 17. (1) to read, “The Board shall consist of — (a) an accounting officer in the department for the time being responsible for matters relating to county economic policy and planning and finance;	The PFM Act does not provide for a position of a CEO responsible for matters of County economic policy, the provisions are for the County Executive Committee member responsible for Finance. The term “CEO” should therefore be replaced by an “accounting officer.”
Section 18 Conduct of the business and	(3) Where any issues of policy arise in the course of the performance of its functions under this Act, the Board shall refer the issue to the	Amend sub-section (3) to read “Where any issues of policy arise in the course of the performance of its functions under this Act, the	The section should be explicit on which CEC the reference is being made on.

affairs of the Board	county executive committee member.	Board shall refer the issue to the county executive committee member responsible for Finance.”	
Section 23 Finances of the Board.	23 (2) The personal emoluments of county officers working or involved in the management of the Fund shall be provided for under the recurrent expenditure of a county Government’ but any other emoluments or payments to such officers’ from the Fund shall be determined by the county executive committee member in consultation with the Salaries and Remuneration Commission.	Delete this section	There is already a concern on the high wage Bill for Country with a key focus on county governments. In the event that this Fund is established, the most ideal process to administer it is through the County Treasury to avoid creating positions that the county might not be able to sustainably facilitate. The Fund will contribute to the high wage bill. In addition, there is currently a freeze on employment.
Section 24 Projects to be in respect of county government functions.	A Project under this Act shall— (a) only be in respect of works and services falling within the functions of the county government under Part 2 of the Fourth Schedule to the Constitution	Delete the section	The proposed projects under this proposed legislation will be duplication of efforts as County Governments are already engaged in the implementation of the functions as devolved through the Fourth Schedule of the Constitution. Any efforts to duplicate functions through the limited county resources is not allowed by both the Constitution and the PFM Act.
Section 25 Project Account	25. (1) For the purpose of project implementation there shall be opened and maintained by the Committee, a project account for every approved project in any commercial bank approved by the County Treasury into which all	The section should be deleted	The Bill establishes several accounts which may pose a challenge in adhering to fiscal responsibility principles as highlighted by the PFM Act section 107. The Council maintains that this fund is unconstitutional however in the

	<p>approved project funds shall be kept and such an account shall be known by the name of the project for which it is opened.</p> <p>(8) All unutilized funds of the project management committee shall be returned to the ward account</p>		<p>event that there is need for opening of accounts then each ward should have only one project account for which disbursements for the respective ward is paid to.</p> <p>The section should be clear that all unspent monies shall be refunded at the end of the financial year to the County Ward Fund and not the respective ward accounts.</p>
<p>Section 27</p> <p>Unspent funds and Joint projects.</p>	<p>27. (1) A Ward with unspent funds at the end of the financial year shall submit new proposals to the Board for approval in accordance with section 35.</p>	<p>Amend section 27. (1) to read “A Ward with unspent funds shall refund back the unspent funds to the County Ward Fund and re-allocation shall be done by the County in the next financial year.”</p>	<p>For purposes of smooth operation, all unspent monies should be returned to the County ward Fund Account for re-allocation to other projects in the next financial year.</p>
<p>Section 29</p> <p>Functions of the Committee</p>	<p>The functions of the Committee shall be to administer the funds set aside under this Act in the respective ward and shall, for this purpose —</p> <p>(a) ensure efficient management of the funds allocated to the ward;</p>	<p>Amend the section to read, “The functions of the Committee shall be to administer the funds set aside under this Act in the respective ward and shall, for this purpose —</p> <p>(a) ensure efficient management of the funds allocated to the ward as per the fiscal responsibility principles as outlined in section 107 of the Public Finance Management Act</p>	<p>The section need to emphasize on the fiscal responsibility principles laid out in the PFM Act.</p>
<p>Section 45</p>	<p>The Board shall ensure that no duplication of projects occur</p>	<p>Amend the section to read, “The respective County Government</p>	<p>It is the role of Counties to ensure that there is no duplication of</p>

Duplication of projects to be avoided.	particularly where it is prudent to combine efforts on projects designed to benefit a large section of a community which traverses two or more wards.	shall ensure that no duplication of projects occur particularly where it is prudent to combine efforts on projects designed to benefit a large section of a community which traverses two or more wards.”	projects, as such the role should be undertaken by County Governments.
Section 46 Establishment of the County Assembly Select Committee.	Each county assembly shall, in accordance with its standing orders, establish a select committee on the County Wards Development Committee consisting of a chairperson and not more than eight other members of the county assembly.	The entire section should be deleted.	The Bill seeks to dictate County Governments on structures that are already in place. Committees should not be established to merely oversee the implementation of the Act.

The Council however maintains that this Bill is not in the interest of County Governments and should not be passed by Parliament

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Number 1, Wendy Court
13 David Osieli Road, off Waiyaki Way
P'O Box 48353-00100 Nairobi
Tel: +254 20 4443676
Wireless: +254 20 2445489
Email: info@tisa.or.ke
www.tisa.or.ke



To:
Mr. J. M. Nyegenye,
Clerk of the Senate/ Secretary, Parliamentary Service Commission,
Office of the Clerk,
First Floor, Main Parliament Buildings,
P. O. Box 41842 – 00100,
Nairobi.

Cc:
Chairperson,
Senate Standing Committee on Finance and Budget,
Parliament Buildings,
P. O. Box 41842 – 00100,
Nairobi.

18th April 2018

Dear Sir,

Re: Memorandum on the County Wards Development Equalization Fund Bill, 2018
(Senate Bill No. 5 of 2018)

About The Institute for Social Accountability

The Institute for Social Accountability (TISA) is a civil society initiative committed towards the achievement of sound policy and good governance in local development in Kenya, to uplift livelihoods of, especially, the poor and marginalized. TISA has been operational since March 2008, and is a locally registered trust.

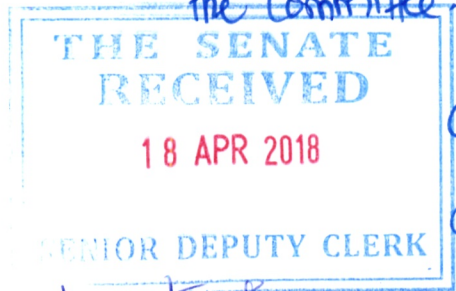
Review of the County Wards Development Equalization Fund Bill, 2018

Having reviewed the above named Bill, we find that it is unconstitutional on several grounds as provided below:

1. Bill usurps county functional mandates

The Constitution (Article 174) charges county governments with the responsibility of decentralization and (Function 14) public participation. The objectives of the bill as proposed usurp those critical mandates.

① Dcom
Kindly bring to the attention of the Committee



② Clerk Assistant Finance Committee
Please deal 18/04/18



2. Bill usurps county budget making mandates

The Constitution assigns county governments fiscal powers to be exercised through the county budget process. This is to be guided by principles which include inclusivity and equity (Article 201). The county budget making process is subsequently elaborated in the County Government Act and Public Finance Management Act.

The constitution also creates the equalization grant to address historical inequalities. It is noteworthy that this fund is presently undercapitalized due to a skewed division of revenue process which favours the national government.

It is our view that the proposed bill will limit the discretionary budget powers of county governments and therefore undermine the independence of county governments. Further, the Bill seeks to mask national governments failure to provide a balanced framework for fiscal intergovernmental relations through the division of revenue process, which has resulted in the underfunding of county service delivery mandates.

3. Bill proposes a structure that breeches separation of powers

The proposed role of the county assembly breeches the principle of separation of powers (Article 175) by giving the county assembly the role of approving projects.

4. Bill contradicts existing legislation/regulation (philosophical disconnect)

The bill is philosophically disconnected from the devolution architecture created under the existing devolution laws, as guided by the sessional paper of devolution 2012 which was unfortunately never adopted. The bill offends the county government act which already provides for the establishment of county funds, and county boards. It offends the county Public Finance Management regulations, which provide for the criteria of establishment of county funds with the express purpose of avoiding duplication, wastage and safeguarding integrated development planning.

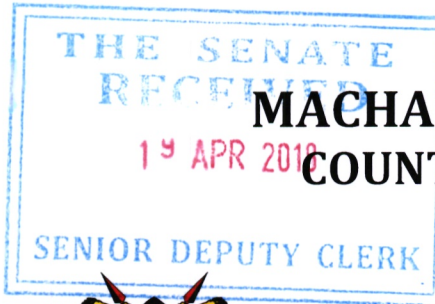
5. Recommendations

It is our recommendation that this Bill be unilaterally withdrawn.

Sincerely,



Wanjiru Gikonyo
National Coordinator



REPUBLIC OF KENYA
MACHAKOS COUNTY GOVERNMENT
COUNTY ASSEMBLY OF MACHAKOS



County Hall
Along Mwatu wa Ngoma Rd
P O Box 1168 - 90100
MACHAKOS - KENYA

Email: assemblymks@gmail.com

Our Ref: MKSCA/ADM/EHSCL/VOL. 1/27

Date: 18th April, 2018

Clerk of the Senate/Secretary, Parliamentary Service Commission
Main Parliament Building, First Floor
P. O. Box 41842 00100
NAIROBI.

① DCom
Kindly bring to the attention of the Committee
Eg 19/04/18



RE: MEMORANDUM ON THE COUNTY WARDS DEVELOPMENT EQUALIZATION FUND BILL (SENATE BILL NO. 5 OF 2018)

The above matter refers.

Kindly do find attached the memorandum of the County Assembly of Machakos on the County Wards Development Equalization Fund Bill for your consideration.

MBIUKI F. G.
CLERK OF COUNTY ASSEMBLY

② Clerk Assistant
Finance Committee
Please deal
20/4/18

**THE REPUBLIC OF KENYA
COUNTY GOVERNMENT OF MACHAKOS
COUNTY ASSEMBLY OF MACHAKOS**



County Hall
Along Mwatu wa Ngoma Rd

Email: assemblymks@gmail.com

**P O Box 1168 – 90100
MACHAKOS – KENYA**

MEMORANDUM

ON THE COUNTY WARDS DEVELOPMENT EQUALIZATION FUND BILL (SENATE BILL NO. 5 OF 2018)

Having reviewed the County Wards Development Equalization Fund Bill the County Assembly of Machakos makes the following submissions: -

SUBMISSIONS

- 1) There is need to define—
 - (a) the phrase “Executive Committee Member” used in clause 8.
 - (b) The word “Assembly” as the respective Assembly for each County to avoid using the phrase “respective County Assembly” each time a provision refers to the Assembly.
- 2) Clause 3 (f)—in addition to providing a framework for the participation of residents in each County with respect to the application of the resources, the Act

should provide for the framework of accountability on the projects implemented under the Fund.

- 3) Clause 5(2)(a) —There is need for clarification on the sources of monies for the Fund as relates to the equitable share. This is because national revenue can be shared among counties equitably and through additional allocation which is either conditionally or unconditionally given by the national government based on the provisions of Article 202(1) and (2) of the Constitution. Also, It will be more clear if it is clarified in the Act that the 8% comprises the minimum of 30% of the total budget of the County that goes to development. It should also be clear that the amount is drawn from the share of revenue allocation.
- 4) Clause 6(c),7 and 13 which relates to the opening of banks accounts need to realigned with the policy of the national treasury that county entities shall only maintain bank accounts with the Central Bank of Kenya and not commercial banks. Also in clause 6, a sub-clause should be added to require that the Board makes quarterly reports to the County Assembly.
- 5) Clause 7— The opening and maintaining of the account for the Fund should be approved by the County Assembly. This is to ensure accountability for the same.
- 6) Clause 8(1)- Allocation of funds to the wards by the County Executive Committee with the approval of the Assembly ought to be done equitably but not equally. This is because different wards have different level of development based on infrastructure and other services. From the foregoing therefore, there is

need to set up criteria which shall be taken into account in allocating monies to wards. This can include conditions like—

- (a) Fiscal capacity and efficiency of the ward;
- (b) Developmental needs of the wards;
- (c) Economic disparities within and among the wards and the need to remedy them;
- (d) The need for affirmative action in respect of disadvantaged wards;
- (e) Need for economic optimization of each ward and to provide incentives for each county to optimize its capacity to raise revenue locally;
- (f) Desirability of stable and predictable allocations of revenue; and
- (g) Need for flexibility in responding to emergencies and other temporary needs, based on similar objective criteria;
- (h) Prioritized use of funds.

Also, under Clause 8 (2) the re-allocation of the funds already allocated for a particular project can only be done on the instructions of the Board and upon approval by the County Assembly.

7) Clause 9— It seems to be contradicting the provisions of section 136 of the Public Finance Management Act as relates appropriation of unspent monies by county governments at the end of the financial year. Hence there is need to align clause 9 with section 136 of PFM Act. However, although section 136(1) is

subject to any other legislation, it should be noted that the Act is to give effects to the provisions of article 207(4)(a) and (b) of the Constitution.

- 8) Clause 10- The administration expenses of the Board should be catered for from Monies appropriated for that purpose by the County Assembly rather than getting it from the monies for the projects for accountability and proper utilization of funds. Clause 10 further needs to be realigned with clause 23 as relates to the expenses of the Board. Also 1% might be inadequate to cater for administration of the Board. The percentage might need to be adjusted upwards.
- 9) Clause 11— add sub-clause (2) that “The Board shall make quarterly reports to the respective County Assembly on the status of the books of accounts.
- 10) Clause 13— says that an account shall be “opened and maintained by each ward” etc. There is need to say who in the ward will do this. The Board, with the facilitation of the County Treasury ought to be given this responsibility. Also, this should be done with the approval of the County Assembly.
- 11) Clause 17 (3)— For certainty it is prudent that the chair be recruited directly by the County Public Service Board with the approval of the Assembly.
- 12) Clause 17— The composition of the Board should be aligned with the requirements set in the State Corporations Act CAP 446 Laws of Kenya. This is because the provisions of section 8(2) of the County Governments No. 17 of 2012 are applicable to the County Governments with necessary modifications until the County Assembly enacts the required legislation.

- 13) Clause 20 (4) — The County Assembly consider the petition in accordance with “Article 47 of the Constitution” in addition to the other considerations.
- 14) Clause 22— the secretariat of the Board ought not to be limited to two. The number of staff can be determined by the County Public Service Board depending on the size of the County and after developing the institutional framework for its secretariat.
- 15) Clause 25— There is need for the County Treasury to maintain more supervision over the Fund, therefore the need to provide for more structures on county treasury involvement. Also, the accounts should be opened as per clause 13 and with the approval of the Assembly.
- 16) Clause 25 — Compare with Clause 10.
- 17) Clause 27 (4)— It is not clear who in the ward will be consulted. The Board should consult the respective Project Proposal and Implementation Committee.
- 18) Clause 28— It will be good to recruit the chairperson of the committee for more certainty. Also, the composition of the Committee needs to be aligned with county administrative structures set out in section 49,51,52,53 and 54 of the County Governments Act. As much as is practicable, the existing county administrative structures should be utilized. Further in 28 (11) two years is too short to realize any meaningful contribution to the committee. This can be substituted with three years. The term of the committee member should not be tied to the term of the MCA.

19) Clause 32(4)— There is need to have the input of the Board in the recruitment of the Project Coordinators. The appointments should also be done with the approval of the County Assembly.

20) Clause 35— There is need to beef up the provisions on public participation in the whole Bill. In preparing the list of proposed projects there should be evidenced public participation at the lowest unit of the County Administration that is at the village level. Public participation fora should be held in consultation with the local leaders.



MBIUKI F. G.
CLERK OF COUNTY ASSEMBLY



VERY URGENT

NAIROBI CITY COUNTY

Telephone: +254 20 2224281
Email: info@nairobi.go.ke
Website: www.nairobi.go.ke



① Dcom

Kindly bring to the attention of the Committee.

City Hall,
P. O. Box 30075-0010,
Nairobi, Kenya.

Eg 18/04/18

OFFICE OF THE GOVERNOR COUNTY SECRETARY AND HEAD OF COUNTY PUBLIC SERVICE

The Clerk
Senate
Tel: 254 2 2221291 or 2848000
Fax: 254 2 2243694



Ref: NCC/WDF/VOL.1/221/2018/JK

17th April, 2018

RE: MEMORANDUM FOR COUNTY WARD DEVELOPMENT EQUALIZATION FUND BILL, 2018

The Nairobi City County Wards Development Fund was established in 2014 under the Nairobi City County Wards Development Fund Act, 2014.

Following information published in the daily Nation dated 16th April, 2018 (page 22) that there will be public participation on County Wards Development Equalization Fund Bill, 2018 slated for Wednesday 18th April, 2018 at County Hall.

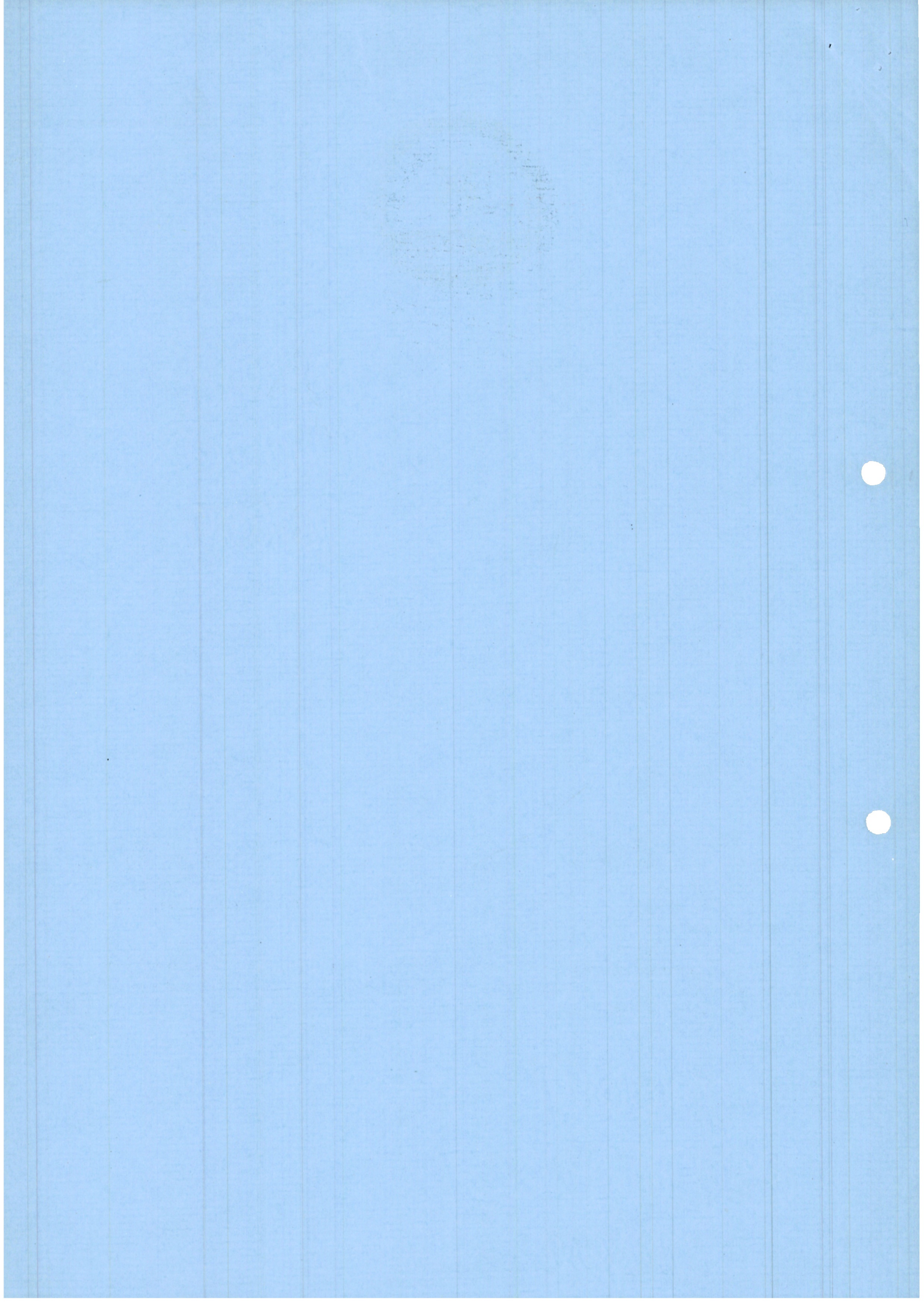
The Nairobi City County is therefore forwarding its Memorandum to the said Bill for your consideration. (Attached the Memorandum and the Nairobi City County Wards Development Fund Act, 2014)

LEBOO OLE MORINTAT, OGW
AG. COUNTY SECRETARY

② Clerk Assistant
Finance Committee

Please deal

19/4/18



Telephone: +254 20 2221349
Website: www.nairobi.go.ke

NAIROBI CITY COUNTY



City Hall
P. O. Box 30075-00100
Nairobi
KENYA

OFFICE OF THE GOVERNOR

MEMORANDUM FOR COUNTY WARDS DEVELOPMENT EQUALISATION FUND BILL, 2018

Introduction

The Nairobi City County Wards Development Fund Act was enacted in 2014 with the main objective of establishing the Wards Development Fund. The Fund facilitates development at the Ward level by ensuring that a specific portion of the county annual budget is devoted to the purposes of development and in particular the fight against poverty at the Ward level.

The Act establishes the Ward Development Fund which is administered by the Officer Administering the Fund under the direction of the County Management Committee. The Act also outlines the financial procedures with respect to the administration and use of the Fund.

It also provides for the submission of ward project proposals by an elected member of the County Assembly. The Act provides for the type of projects that may be included for funding and in particular such projects must be development based. The Act also sets out a minimum number of projects to be funded so as to ensure distribution of projects within the Ward and a maximum number in a bid to avoid spreading out too thin.

The Act also establishes the Ward Development Fund Committee which receives a list of projects from every unit of a ward. The Act also establishes the County Assembly Select Committee which oversees the process of receiving and forwarding project proposals to the County Executive Committee Member for finance among other functions.

The Act contains provision on the procedure to be followed in the implementation of the Ward based projects and that actual implementation of the Ward based projects be done by the relevant County Government Department in a Ward.

The Act under the miscellaneous section contains provisions to ensure proper utilization of funds and also provides for penalties against any person who misappropriates funds meant for development projects under the Act.

Amendments to the Nairobi City County Wards Development Fund Act, 2014

Since the enactment of the Act, there have been a number of amendments to the Act especially based on proposals by the Controller of Budget and on practical fronts. (See the Nairobi City County Wards Development Fund (Amendment) Act, 2014, 2015, 2016).

THE PROPOSED COUNTY WARDS DEVELOPMENT EQUALIZATION FUND BILL, 2018

Clause 2 of the Bill-

"community" means residents of a particular geographical area or region defined as a ward, location, sub location or village and having common interests;

Analysis

It is noted that this definition is different from that contained in the Nairobi City County Wards Development Fund Act, 2014.

Recommendation

For consistency purposes, it is proposed that this definition be as provided for in section 2 of the Nairobi City County Wards Development Fund Act, 2014.

ADDITIONAL Clause 2

- County Executive Committee Member be defined in the Bill
- County Management Committee

Clause 5 provides as follows-

5. (1) *There is established in each county, a fund to Establishment of the Fund to be known as the county ward development fund which shall be administered according to the Act.*
- (2) *The Fund shall comprise of at least eight percent of the share of revenue allocated to the respective county government for the respective year; and such other monies that may lawfully accrue to the Board in the discharge of its functions under this Act.*

(3) The Controller of Budget shall not authorize withdrawal of monies under Article 207 of the Constitution where a county fails to comply with the provisions of this Act.

Analysis

Arguably this provision seems to be in line with section 4 of the Nairobi City County Wards Development Fund Act, 2014 as this provision requires that the Fund should comprise of among other things, an amount not less than 5% of the ordinary revenue of Nairobi City County in every financial year.

Recommendation

It is proposed that this provision be reviewed/amended to avoid interpretation issues with the Nairobi City County Wards Development Fund Act, 2014. The proposed law should take into account the provisions as contained in the Nairobi City County Wards Development Fund Act, 2014.

Clause 6 provides as follows-

6. (1) *All disbursements from the Fund shall be-*
- (a) approved by the respective Board and recorded in the minutes of the Board; and*
 - (b) for specific projects as submitted by the Committee in accordance with the procedures outlined in this Act.*
 - (c) made through the county bank account maintained for every ward in accordance with section 7 of this Act.*
- (2) Notwithstanding subsection (1), payments for a joint project or a joint procurement may be made directly to a supplier or to a joint account established by the respective wards for that purpose with the approval of the Board.*
- (3) The Board shall, for the purpose of ensuring the effective and efficient management of the funds, impose such conditions and requirements for the release of funds as it may consider appropriate.*
- (4) The Board may impose such conditions as it may consider appropriate, including restrictions on a particular ward and such conditions shall be reported together with the monthly returns to be submitted to the county executive member in accordance with this Act.*

Analysis

The Board as established in the proposed law is the equivalent of the County Management Committee as established in the Nairobi City County Wards Development Fund Act, 2014. **Clause**

6 of the Bill requires that any disbursements from the Fund must be approved by the Board which in our view is in line with section 11 of the Nairobi City County Wards Development Fund Act, 2014.

Recommendation

It is proposed that the terminology used in the proposed law that is the “*Board*” should be amended to “*County Management Committee*”

Clause 7 of the Bill reads as follows-

7. (1) There shall be opened and maintained an account approved by the county treasury into which all funds allocated to the wards under section 5(2) shall be deposited for the purpose of disbursements under this Act.

(2) The signatories to an account under subsection (1) shall be the fund manager and three other persons appointed by the Board from amongst its members.

(3) The signing instructions shall be such that the signature of the fund manager shall be mandatory on all payment cheques or instruments intended for actual release of money from the Fund, and at least two of the other three signatories.

Analysis

Section 15 of the Nairobi City County Wards Development Fund Act, 2014 is very clear as it expressly provides that the Bank Account is to be opened and maintained by the county treasury.

Recommendation

It is proposed that Clause 7 be reviewed to avoid ambiguity in its meaning as it does not state who should open the Bank Account.

Also, the term “The Fund Manager” as proposed is the equivalent of the “Officer Administering the Fund”. (See Clause 21 of the proposed law and section 8 of the Nairobi City County Wards Development Fund Act, 2014). For purposes for coherence, it is proposed that the term “Fund Manager” be amended to “Officer Administering the Fund”

Clause 8 of the Bill provides as follows-

8. (1) The county executive committee member shall, with the approval of the respective county assembly, allocate funds equally to all the wards in the respective county in each financial year in accordance with this Act.

Analysis

This provision conflicts with section 12 of the Nairobi City County Wards Development Fund Act, 2014 which reads as follows-

12. (1) The Member of the County Executive Committee, with the concurrence of the County Management Committee shall for each financial year allocate funds to each Ward.

Recommendation

It is proposed that Clause 8 of the proposed law be reviewed because it is impractical to allocate funds equally to every ward because of the peculiarities of each ward. The interpretation of the two provisions should also be reviewed.

Clause 10 of the Bill-

10. The Board shall set aside a sum not exceeding one percent of the total allocation for the project to cater for its administration expenses.

Analysis

The Nairobi City County Wards Development Fund Act, 2014 does not provide for this.

Recommendation

It is proposed that this provision, if, adopted be contained in an amendment or regulations pursuant to the Act.

Clause 12 of the Bill-

(1) All funds received by the Board and the respective Committees pursuant to this Act shall be audited and reported upon by the Auditor-General.

(2) The Auditor-General shall submit a report under subsection (1) to the Senate for consideration.

Analysis

What is the justification for the Auditor-General submitting the report to the Senate for consideration? Does the law allow for this? If so there should it should be clear what happens after senate considers the report.

Recommendation

This provision should be interrogated further.

Clause 13 of the Bill provides for ward account which read as follows-

(1) For the purpose of disbursement of funds under this Act there shall be opened and maintained by each ward, a ward account in any commercial bank approved by the County Treasury into which all funds allocated to the ward shall be kept and such an account shall be known by the name of the ward for which it is opened.

Analysis

It should be noted that this provision as was previously contained in section 16 of the Nairobi City County Wards Development Fund Act, 2014 was amended and was deleted thereof. It was noted that the ward fund account and opening of the various accounts in the wards was found to be unnecessary. This opinion was even as shared by the Controller of Budget.

Recommendation

It is proposed that this provision be deleted.

Clause 20(6)-

(6) A vacancy arising as a result of the removal of a member under subsection (5) shall be filled in the manner set out in section 15 within thirty days of the occurrence of the vacancy.

Analysis

Section 15 as referred to does not provide for the manner of filling of office once there is removal.

Recommendation

It is proposed that this provision refer to the correct section on the subject matter or provide further on the manner of filling of office once there is removal.

Clause 25(1)-

(1) For the purpose of project implementation there shall be opened and maintained by the Committee, a project account for every approved project in any commercial bank approved by the County Treasury into which all approved project funds shall be kept and such an account shall be known by the name of the project for which it is opened.

Analysis and Recommendation

This clause conflicts with section 116 of the Public Finance Management Act, 2012. It is proposed that this Project Account be opened by the County Executive Committee Member in charge of Finance.

Clause 47(1) (d)-

47. (1) The Board shall, on a quarterly basis, submit a report to the county assembly committee detailing –

(d) any restriction imposed on a ward account in accordance with the Act.

Analysis

It should be noted that this provision was deleted as was it was previously contained in the Nairobi City County Wards Development Fund Act, 2014. It should not be the intention of the Board to impose restrictions on the ward account.

Recommendation

It is proposed that this provision be deleted.

Clause 52 of the Bill-

*52. (1) The Board may make Regulations for better **carrying** into effect the provisions of this Act.*

(2) For the purposes of Article 94 (6) of the Constitution –

(a) the purpose and objective of the delegation under this section is to enable the Board to make Regulations for better carrying into effect the provisions of this Act; and

(b) the authority of the Board to make Regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfillment of the objectives specified under this section.

(3) Without prejudice to the generality of subsection

(1) the Committee may make regulations prescribing –

(a) the Forms to be used for various purposes; and

(b) any other matter as may be prescribed from time to time

(4) The absence of regulations under this Act shall not hinder the implementation of this Act.

Analysis and Recommendation

It is proposed that the County Executive Committee Member for finance with advice from the Board makes regulations for the better carrying of the provisions of the Act. It is noted that this provision gives powers to the Board to make regulations yet it also gives powers to the Committee to make regulations on a number of things.

Dated the.....2018

LEBOO OLE MORINTAT, OGW
AG. COUNTY SECRETARY

Bill Read for the 1st Time on 25/1/2014

Bill Read for the 2nd time on 25/1/2014

Bill read for the 3rd time on 25/1/2014

SPECIAL ISSUE

Nairobi City County Gazette Supplement No. 4 (Acts No. 1)



CLERK
NAIROBI CITY
COUNTY ASSEMBLY
P. O. Box 45844-00100
NAIROBI

REPUBLIC OF KENYA

**NAIROBI CITY COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2014

NAIROBI, 11th February, 2014

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THE NAIROBI CITY COUNTY WARDS DEVELOPMENT FUND
ACT, 2014

No. 1 of 2014

Date of Assent: 3rd February, 2014

Date of Commencement: See Section 1

ARRANGEMENT OF CLAUSES

Clause

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THE NAIROBI CITY COUNTY WARDS
DEVELOPMENT FUND ACT, 2014

AN ACT of Nairobi City County Assembly to provide for the establishment, administration and use of the Ward Development Fund and for connected purposes.

ENACTED by County Assembly of Nairobi City as follows—

PART I-PRELIMINARY

1. This Act may be cited as the Nairobi City County Wards Development Fund Act, 2014, and shall come into operation upon the expiry of thirty days from the date of publication.

Short title and commencement.

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

Interpretation.

“Clerk” means the Clerk of the Nairobi City County Assembly;

“Community” means residents of a particular area or region as a Ward, location or sub – location and having common interests;

“County Management Committee” means the County Wards Development Fund Management Committee established by section 5;

“Fund” means the Ward Development Fund established by section 4;

“Member of the County Executive Committee” means the Member of the County Executive Committee responsible for finance and economic planning;

“Officer Adminstrating the Fund” means the person appointed as such under section 8;

“Officer of the Fund” means the officer seconded by the County Management Committee to the Ward under section 9;

“Ordinary Revenue” means the revenue into the County Revenue Account from both the National Government and the local county collections;

“Projects” means the projects referred to under section 28;

"Ward Development Fund Committee" means the committee established under section 32; ..

"Ward Fund Account" means the account maintained for every ward in accordance with section 16.

3. The object and purpose of this Act is to further the objectives of the provisions of Article 186 and 207 (2) (a) of the Constitution and ensure that a specific portion of the county annual budget is devoted to the Wards for purposes of development and in particular the fight against poverty at the Ward level.

Objects and purposes
of Act.

PART II- ESTABLISHMENT AND ADMINISTRATION OF THE FUND

4. (1) There is established a Fund to be known as the Ward Development Fund which shall be administered by the Officer administering the Fund under the direction of the County Management Committee.

Establishment of the
Fund.

(2) The Fund shall consist of-

- (a) an amount of not less than five percent of all the ordinary revenue of the Nairobi City County in every financial year;
- (b) any monies accruing to, donated, lent or received by the Fund from any other lawful source.

(3) The amount referred to in section 2(a) shall be calculated on the basis of the ordinary revenue collected in the previous financial year, as approved by the County Assembly.

(4) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained for the purpose for which the Fund is established.

(5) There shall be paid out of the Fund payments in respect to any expense incurred in pursuance of the provision of this Act.

5. (1) There is established a committee to be known as the County Wards Development Fund Management Committee.

Establishment of the
County Management
Committee.

(2) The County Management Committee shall consist of—

- (a) the Chief Officer of the County Department for the time being responsible for matters relating to finance and economic planning or a designated alternate not being below the level of Deputy Chief Officer;
 - (b) the Chief Officer of the County Department for the time being responsible for matters relating to public works or a designated alternate not being below the level of Deputy Chief Officer;
 - (c) the Clerk of the County Assembly or a designated alternate not below the level of Deputy Clerk;
 - (d) four persons, qualified in matters relating to finance, accounting, engineering, economics, community development, or law, competitively and transparently recruited and appointed by the Member of the County Executive Committee in accordance with subsection (4) taking into account gender balance and the diversity of the County;
 - (e) the Member of the County Executive Committee responsible for legal matters who shall be an *ex-officio* member;
 - (f) the Officer Administering the Fund who shall be an *ex-officio* member.
- (3) The Member of the County Executive Committee shall appoint the Chairperson of the County Management Committee from amongst the four persons appointed in accordance with paragraph (d) of subsection (2).
- (4) The names and curriculum vitae of the persons competitively and transparently nominated as members of the County Management Committee pursuant to paragraph (d) of subsection (2) shall be submitted to the County Assembly for approval before appointments are made.

6. (1) The conduct and regulation of the business and affairs of the County Management Committee shall be as provided in the First Schedule.

(2) Except as provided in the First Schedule, the County Management Committee may regulate its own procedure.

7. The functions of the County Management Committee shall be to-

Functions of the
County Management
Committee.

- (a) ensure allocation and disbursement of funds in every Ward;
- (b) ensure prudent management of the Fund;
- (c) receive and discuss the annual reports and returns from the Wards;
- (d) ensure the compilation of proper records, returns and reports from the Wards;
- (e) ensure timely submissions to County Assembly of various returns, reports and information as required under this Act;
- (f) consider project proposals submitted for various wards in accordance with this Act and make appropriate recommendations to the County Assembly;
- (g) consider and report to the County Assembly with recommendations, names of persons required to be approved by the County Assembly under this Act;
- (h) continually review, oversee the implementation, policy framework and legislative matters that may arise in relation to the Fund;
- (i) perform such other functions as may be provided for in this Act.

8. (1) There shall be an Officer Administering the Fund who shall be appointed from the county public service and has—

Officer Administering
the Fund.

- (a) at least a university degree in finance, accounting, engineering, economics, community development, law or a related field from a recognized university;
- (b) at least five years working experience in public finance or a relevant field.

(2) The Officer Administering the Fund shall be the chief executive officer of the Fund and Secretary to the

County Management Committee and shall subject to the directions of the County Management Committee-

- (a) supervise and control the day to day administration of the Fund;
- (b) be responsible for the day to day management of the affairs and staff in the service of the County Management Committee;
- (c) prepare monthly returns on the movement of funds as appropriate for submission to the County Assembly;
- (d) keep or cause to be kept proper books of accounts and other books and records related to the Fund;
- (e) prepare, sign and transmit to the Auditor General accounts of the Fund in accordance with the Public Audit Act; and
- (f) perform any other duties that may be reasonably assigned to him by the County Management Committee from time to time.

(4) The Officer Administering the Fund shall-

- (a) be appointed by the Member of the County Executive Committee after approval by the County Assembly;
- (b) serve a term of three years but shall be eligible for reappointment.

9. (1) The Member of the County Executive Committee shall, upon request by the County Management Committee, facilitate secondment to the Fund of such officers from the county public service as may be appropriate and necessary for the proper management of the Fund. Secondment of staff.

(2) The County Management Committee may designate any of the officers seconded under subsection (1) to be Officer of the Fund in respect of one or more wards as may be appropriate.

10. The County Management Committee may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the County Management Committee, Delegation by the County Management Committee.

the exercise of any of the powers or the performance of any of the functions or duties of the County Management Committee under this Act or under any other written law.

PART III-FINANCIAL PROVISIONS.

11. (1) Each and every disbursement from the Fund shall be approved and minuted by the County Management Committee. Disbursement from the Fund.

(2) All disbursements from the Fund shall be for specific projects as submitted by the wards in accordance with the procedures outlined in this Act.

(3) All disbursements shall be made through the Ward bank accounts maintained for every Ward in accordance with section 16 of this Act.

(4) Notwithstanding the provisions of subsection (3), payments for a joint project as outlined in section 28 (4) or a joint procurement, may be made directly to a supplier or to an account established for the purpose with due approval of the County Management Committee.

(5) The record of the amounts received by each Ward and the record of expenditure of amounts so received shall be submitted to the County Management Committee within thirty days after the close of the relevant financial year together with a copy of the relevant bank statements and no disbursements for the succeeding financial year shall be made into the accounts until the said records are duly received.

(6) The County Management Committee shall set out general conditions and requirements for release of funds, to ensure efficient and effective management of resources.

(7) The County Management Committee may impose reasonable requirements, including restrictions, on a particular Ward and such restrictions or requirements shall be reported together with the monthly returns to be submitted to the Member of the County Executive Committee in accordance with this Act.

12. (1) The Member of the County Executive Committee, with the concurrence of the County Management Committee shall for each financial year allocate funds to each Ward. Allocation of funds.

(2) Once funds are allocated for a particular project, they shall remain allocated for that project and may only be re-allocated for any other purpose during the financial year with the approval of the County Management Committee.

(3) If for any reason a particular project is cancelled or discontinued during the financial year, funds allocated for such a project shall be returned to the Fund and credited to the account of the Ward from which the funds were withdrawn.

(4) Unspent funds shall be allocated to any eligible project and such project may be new or ongoing at the end of the financial year.

(5) For the avoidance of doubt, a return as set out in the Second Schedule shall be made for the current financial year and every previous financial year on which some funds remain unspent.

13. (1) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be returned to the Fund and applied in accordance with section 12 (5) of this Act.

Funds to be retained in the Fund.

(2) All funds allocated to a Ward shall be cumulative and shall be carried forward from one financial year to the next, including funds returned into the accounts in accordance with section 12(3) or funds which are not utilized for whatever reasons.

14. (1) A portion of the Fund, equivalent to five per centum (hereinafter referred to as the "Emergency Reserve") shall remain unallocated and shall be available for emergencies that may occur within the Ward.

Emergency reserve.

(2) The Ward Development Fund Committee shall determine the allocation of the emergency reserve in accordance with the Act.

(3) "Emergency" shall be construed to mean an urgent, unforeseen need for expenditure for which it is in the opinion of the committee that it cannot be delayed until the next financial year without harming the public interest of the constituents.

(4) For each project, the Project Management Committee shall set aside a sum of five per centum of the

total allocation for the project to cater for the administration expenses of the project.

(5) The sum set aside under subsection (4) shall be properly accounted for and proper books of accounts kept and returns made to the Wards Development Fund Committee for that Ward on how the sum has been used.

15. (1) A bank account of the Fund shall be opened and maintained by the County Treasury.

Bank account of the Fund.

(2) The signatories to the account of the Fund maintained in accordance with subsection (1), shall be the Officer Administering the Fund and two other persons appointed by the County Management Committee from amongst its members.

(3) The signing instructions shall be such that the signature of the Officer Administering the Fund shall be mandatory on all payment cheques or instruments intended for actual release of money from the Fund, plus any one of the other two signatories.

16. (1) For the purpose of disbursement of funds under this Act, there shall be opened and maintained a Ward Fund Account for every Ward at any commercial bank, approved by the Member of the County Executive Committee into which all funds shall be kept and such an account shall be known by the name of the Ward for which it is opened and each Ward shall maintain only one account.

Ward Fund Account.

(2) The bank account opened pursuant to subsection (1), shall be separate from that of the County Treasury.

(3) At least three signatories shall be required for every cheque or instrument for actual payment or withdrawal of funds from a Ward Fund Account and the signing instructions shall be such that there shall be at least one signature of an officer seconded by the County Management Committee and at least two signatures of two members of the Ward Development Fund Committee.

(4) The Officer of the Fund shall hold the authority to incur expenditure of the funds at the Ward Fund Account.

(5) Funds from the Ward Fund Account shall only be withdrawn as disbursements for a particular project in accordance with the provisions of section 11 of this Act.

(6) Every payment or instruction for payment out of the Ward fund account shall be strictly on the basis of a minuted resolution of the Ward Development Fund Committee.

(7) All receipts, savings and accruals to the Ward Fund Account and the balances thereof at the end of each financial year shall be returned to the County Management Committee Fund Account.

(8) All unutilized funds shall remain in the Ward Fund Account and no investment elsewhere shall be permitted, provided that funds meant for a project that is cancelled or discontinued shall be returned to the Fund Account in accordance with section 11 of this Act.

(9) All unutilized funds of the Project Management Committee shall be returned to the Ward Fund account.

(10) Any accruing revenues, interest and liabilities from any Ward Fund Account shall be declared to the County Management Committee together with the annual returns.

17. (1) An accurate record of all disbursements made for projects to every Ward shall be kept and updated every month by the County Management Committee.

Record of disbursements to be kept.

(2) The disbursement of funds to the Ward Fund Account shall be effected at the beginning of the first quarter of each financial year with an initial amount equivalent to twenty-five per centum of the annual allocation for the Ward and thereafter the Ward Fund Account shall be replenished in three equal installments at the beginning of the second, third and fourth quarters of the financial year.

(3) The Chairperson of the County Management Committee shall submit an annual report on the activities, operations and expenditure under this Act.

(4) At the end of every financial year the County Management Committee shall submit separate accounts of the wards and the County Management Committee to the Auditor General.

18. (1) The personal emoluments of officers of the County Government working or involved in the

Remuneration and allowances.

management of the Fund shall be determined by the Member of the County Executive Committee after consultation with the County Management Committee upon the advice of the Salaries and Remuneration Commission and shall be provided under the recurrent expenditure of the County Government.

(2) Out of pocket expenses incurred by any person officially involved in the management of the Fund or the implementation of projects under the Fund, including public officers may be reimbursed but that not more than three percent of the total allocation in the financial year may be used for this purpose.

(3) Sitting and other allowances for the members of the County Management Committee and the Ward Development Fund Committees shall be fixed by the Member of the County Executive Committee upon the advice of the Salaries Remuneration Commission.

PART IV—SUBMISSION OF WARD PROJECT PROPOSALS

19. (1) The list of proposed Ward based projects to be covered under this Act shall be submitted by the chairperson of the Ward Development Fund Committee to the County Management Committee after approval by the Ward Development Fund Committee for that Ward. Submission of projects

(2) The County Management Committee shall receive and compile the list of proposed Ward projects submitted to it under this Act and grant the necessary approval where the requirements of this Act have been fulfilled.

20. (1) The list of the proposed Ward projects shall be submitted to the County Management Committee before the end of the month of February in each year or such other month as may be determined by the Member of the County Executive Committee in order to ensure timely inclusion of the projects in the annual Government budget of a particular financial year. Submission deadline.

(2) Where the chairperson of the Ward Development Fund Committee fails to submit the list of Ward based projects to the County Management Committee within the stipulated time in subsection (1), the list shall be deemed to have been submitted to the County Management Committee upon the lapse of the stipulated time.

21. (1) The list of projects shall be submitted on a Submission Form. Ward Projects Submission Form set out in the Third Schedule to this Act accompanied by minutes of the Ward Development Fund Committee approving the projects.

(2) All projects proposed for every Ward shall be listed in the Form together with the cost estimates, amounts allocated and amounts disbursed to such projects.

22. For every project listed in the Form, there shall be attached a Project Description Form set out in the Fourth Schedule. Projects description Form.

23. (1) The list of projects received by the County Management Committee pursuant to section 19 shall be tabled for review at a meeting of the County Management Committee. Approval of projects.

(2) The County Management Committee shall scrutinize and approve for funding those project proposals that are consistent with the Act.

(3) Where the County Management Committee does not approve a proposal submitted to it under this section, it shall refer the matter to the Wards Development Fund Committee giving reasons as to, why it has declined the proposal.

24. The allocation of funds to various projects in each Ward is the responsibility of the Ward Development Fund Committee to be exercised at its own discretion within the provisions of this Act. Discretion of Ward Development Fund Committee.

25. The projects listed for each Ward shall be numbered by the County Management Committee and the serial numbers of all projects in a Ward shall bear the number of the Ward as delineated by the Independent Electoral and Boundaries Commission in order to ensure that a project retains the same serial number every year until its completion. List to be serialized

26. (1) The types of projects submitted for funding under this Act shall comply with the provisions of this Act. Criteria for Projects.

(2) It shall be the responsibility of the Ward Development Fund Committee to ensure that the list of projects submitted for funding comply with the provisions of the Act and their total cost does not exceed the allowable ceiling for the particular Ward or is not below that ceiling.

(3) If the list of projects submitted for funding is in contravention of subsection (2) the same shall be referred back to the Ward Development Fund Committee for amendment and re-submission.

(4) Whenever the amount for projects in a Ward is less than the allowable ceiling for reasons of projects being deleted in accordance with sub-section (3), or for whatever reason, the shortfall shall be indicated as unallocated amount against that particular Ward on the list to be forwarded to the Member of the County Executive Committee.

PART V—TYPES OF PROJECTS

27. (1) Projects under this Act shall-

Projects to be
community based.

- (a) be in respect of those falling within the functions of the county government as contemplated under Part 2 of the Fourth Schedule to the Constitution; and
- (b) be community based in order to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants of a particular area.
- (c) Take into cognizance the rights of children, persons with disability, youth, minorities, marginalized and older members of the society as provided for under Article 53, 54, 55, 56 and 57 of the Constitution.

(2) Any funding under this Act shall be for a complete project or a defined phase, of a project and may include the acquisition of land and buildings.

(3) All projects shall be projects as defined under this Act and may include costs related to studies, planning and design or other technical input for the project but shall not include recurrent costs of a facility.

(4) Funds provided under this Act shall not be used for the purpose of supporting political bodies or political activities or for supporting religious bodies or religious activities.

(5) Notwithstanding the provisions of subsection (4), the Ward Development Fund Committee may identify a religious body or organization as an appropriate specialized

agency for purposes of section 12 with regard to emergency support.

(6) A Ward Development Fund Committee office project shall be considered as a development project for purposes of the Act and may include appropriate furniture and equipment for the office.

(7) Each of the projects shall be listed on the Third Schedule including the emergency item under section 11 and, where applicable, the activities under subsection (8) of this section.

(8) The allocation may be used as follows-

- (a) fifteen percent of each Wards annual allocation may be used for social welfare programmes;
- (b) an amount not exceeding three per cent may be used as expenses for running the Ward which may include rent and utilities, staff salaries and committees allowances;
- (c) two per cent of each ward annual allocation may be used for sporting activities;
- (d) two per cent of each Ward annual allocation may be used for environmental activities;
- (e) two per cent of each Ward annual allocation may be used on capacity building;
- (f) running and maintenance of motor vehicles and equipment must not take more than three percent of the total annual allocation.

28. (1) The number of projects to be included in the Ward Projects Submission Form specified in the Third Schedule shall be a minimum of five and a maximum of twenty five for every Ward in each financial year. Number of projects.

(2) Wards with unspent funds at the end of the financial year shall submit new proposals to the County Management Committee for approval in accordance with section 12(5) of this Act.

(3) Project activities of a similar nature in a particular Ward may be combined and considered as one project for purposes of subsection (1) provided that the sub projects are listed in the Second Schedule.

(4) Wards may pool resources for joint projects provided that the decision for such joint projects shall first be approved by the Ward Development Fund Committee of each of the participating wards and shall be reflected on the projects listed for each of the participating wards.

(5) Where wards have joint projects, the County Management Committee shall co-ordinate such projects.

29. (1) The Ward Development Fund Committee may make appropriate consultations with the relevant Government departments to ensure that cost estimates for the projects are as realistic as possible.

Cost estimates to be realistic.

(2) The Ward Development Fund Committee shall rank the projects in order of priority and whenever, in the opinion of the County Management Committee, the total cost of the projects listed exceed the ceiling for a particular Ward, then the order in which they are listed shall be taken as the order of priority for purposes of allocation of funds, provided that on-going projects shall take precedence over all other projects.

30. (1) A project or any part thereof which involve personal awards to any person in cash or in kind, shall be excluded from the list of projects submitted in accordance with section 14 of the Act.

Personal awards to be excluded.

(2) Notwithstanding the provisions of subsection (1), social welfare programmes shall be considered as a development project for purposes of this Act provided that such a project shall not be allocated more than twenty-five per centum of the total funds allocated for the Ward in any financial year.

31. For the purposes of this Act, the County Management Committee may consider part funding of a project financed from sources other than the Fund so long as the other financiers or donors of that project have no objection and provided that the part funding for the project availed pursuant to this Act shall go to a defined unit or any part thereof or phase of the project in order to ensure that the particular portion defined in the allocation is completed with the funds allocated under this Act.

Counter-part funding to be permitted.

PART VI—THE WARD DEVELOPMENT FUND
COMMITTEE AND THE COUNTY ASSEMBLY
SELECT COMMITTEE

32. (1) There shall be a Ward Development Fund Committee for every Ward which shall be constituted by the elected Member of the County Assembly within the first thirty days of a new Assembly.

Establishment of Ward
Development Fund
Committee.

33. (1) The membership of the Ward Development Fund Committee shall comprise-

Composition of the
Ward Development
Fund Committee

- (a) a Chairperson nominated by the elected Member of the County Assembly;
- (b) two persons representing the male in the Ward of whom one shall be a youth;
- (c) two persons representing the female in the Ward of whom one shall be a youth;
- (d) one representative of local non-governmental organizations or religious organizations;
- (e) one member representing special interest groups;
- (f) the Ward Administrator who shall be the Secretary;

(2) The seven persons referred to in subsection (1) (b), (c), (d) and (e) shall be nominated through the following procedure—

- (a) within thirty days of being sworn in, each Member of the County Assembly for a particular Ward shall convene open public meetings of registered voters in each of the elective wards in the Ward;
- (b) each sub-ward shall then elect five persons whose names shall be forwarded to the officer of the Fund in the Ward;
- (c) upon receiving the names from all the sub-wards in the Ward, the Member of the County Assembly in consultation with officer of the Fund and the sub county administrator for the Ward, shall appoint seven persons to the Ward Development Fund Committee, taking into account the geographical diversity within the Ward,

communal, religious, social and cultural interests in the Ward and the requirements of gender, youth and representation of persons with disabilities;

(d) upon conclusion of the election of the chairperson in the manner stipulated in paragraph (d), the officer of the Ward Development Fund Committee shall forward the names of the members of the Ward Development Fund Committee to the Officer Administering the Fund for onward transmission to the Member of the County Executive Committee for gazettelement;

(e) the Member of the County Assembly for the Ward shall be an *ex-officio* member of the Committee

(4) The Member of the County Executive Committee shall cause the names of persons appointed as members of the Wards Development Fund Committee, pursuant to subsection (2) to be published in the Kenya Gazette.

(5) The first meeting of the Ward Development Fund Committee shall be convened within the first sixty days of a new County Assembly or a by-election, by the county government official at the Ward or in his or her absence, by an officer of the Ward Development Fund Committee seconded to the Ward, on such day as may be designated by the Member of the County Executive Committee.

(6) The Chairperson of the Ward Development Fund Committee in consultation with the Member of the County Assembly for the Ward, the sub-county administrator for the Ward, and the ward administrator for every ward shall, within the first year of a new County Assembly and at least once every two years thereafter, convene open forum public meetings in every Ward to deliberate on development matters in the Ward.

(7) Each sub-ward shall come up with a list of priority projects to be submitted to the Ward Development Fund Committee

(9) The term of office of the members of the Ward Development Fund Committee shall be three years irrespective of a county assembly term but shall be renewable and shall come to an end upon the appointment

No. 1 *Nairobi City County Wards Development Fund*
of a new Ward Development Fund Committee in a manner provided in this Act.

2014

(10) The Officer of the Fund shall be the custodian of all records and equipment of the Ward during the term of the county assembly and during transitions occasioned by general elections or a by-election.

(11) Whenever a vacancy occurs in the Ward Development Fund Committee by reason of resignation, incapacitation or demise of a member then the vacancy shall be filled from the same category of persons where the vacancy has occurred.

(12) The Ward Development Fund Committee shall meet at least six times in a year and not more than twenty four times in every financial year including sub-committee meetings.

(13) The committee may employ staff, not exceeding five in number, and such staff shall have knowledge in information and communications technology, construction and basic accounting.

(14) Staff employed under subsection (13) shall help in project monitoring evaluation, co-ordination and proper keeping of records and such staff shall be remunerated from the funds allocated for administration and recurrent expenses.

34 (1) Each unit of a ward shall come up with proposals, discuss them, select and prioritize a list of projects to be submitted to the Ward Development Fund Committee

Functions of the Ward Development Fund Committee.

(2) The Ward Development Fund Committee shall deliberate on project proposals from the Ward and any other project which the committee considers beneficial to the Ward, then draw up a priority project list both immediate and long term, out of which the list of projects to be submitted to County Assembly in accordance with section 14.

(3) The quorum of the Ward Development Fund Committee shall be one half of the total membership.

35. (1) The County Assembly shall, in accordance with its Standing Orders, establish a Select Committee

Establishment of the County Assembly Select Committee.

consisting of a chairperson and not more than ten other members of the County Assembly.

(2) In determining the membership of the County Assembly Select Committee, the County Assembly shall ensure proportionate representation of the County Assembly political parties.

(3) The term of office of the members of the County Assembly Select Committee shall be three years renewable or upon the appointment of a new committee in a manner provided for in this Act, whichever comes earlier.

(4) The procedures and rules for the operations of the County Assembly Committee shall be governed by the Standing Orders of the County Assembly.

(5) The functions of the County Assembly Select Committee shall be to—

- (a) consider and recommend to the County Assembly any matter requiring action by the County Assembly pursuant to the provisions of this Act;
- (b) oversee the implementation of this Act and in this respect, shall after every two years submit a report to the County Assembly and where necessary, propose any amendments to this Act, in particular, with respect to the quantum of funds repayable into the Fund in accordance with section 4 of the Act;
- (c) oversee the policy framework and legislative matters that may arise in relation to the Fund;
- (d) continually review the framework set out for the efficient delivery of development programmes financed through the Fund;
- (e) consider and report to County Assembly with recommendations, names of persons required to be approved by County Assembly under this Act.

(6) The Committee may make reports other than the statutory report stated in sub section 5(b) to appraise the County Assembly on various matters relating to the Fund and to seek various approvals as required by the Act.

36. (1) The County Management Committee shall, on a monthly basis, submit a report to the County Assembly Select Committee detailing—

Quarterly reports on projects and disbursements.

- (a) a summary of the project proposals received from the wards in the preceding month and indicating the approval status of such projects;
- (b) a summary of the status of disbursements of funds to the wards for that preceding month;
- (c) a summary of the status of disbursements from the Treasury to the County Account; and
- (d) any restriction imposed on a Ward Fund Account in accordance with this Act.

(2) The County Management Committee shall ensure that the list of projects forwarded to it by each ward is, upon approval, funded in accordance with this Act.

PART VII—IMPLEMENTATION OF PROJECTS

37. (1) Projects under this Act shall be implemented with the assistance of the relevant department of County Government and all payments through cheques or otherwise shall be processed and effected in accordance with government regulations for the time being in force.

Project Management Committee to implement.

(2) Where a project in a Ward involves the purchase of equipment, such equipment shall remain for the exclusive use of that Ward.

(3) The Ward Development Fund Committee and the County Management Committee shall be responsible for monitoring the implementation of projects and may designate a sub-committee, a ward committee or a project committee, the functions of monitoring an on-going project and shall submit a report on the ongoing projects to the ward administrator and sub-county administrator, and the County Assembly committee.

(4) All fixed and movable assets, including equipment bought under this Act for use by the Ward Development Fund Committee shall be the property of the County Government to be insured in the name of the County Government but serialized to reflect the name of the Ward.

weather
→

(5) No asset or equipment acquired under this section shall be disposed of by the County Government without the prior approval of the County Management Committee.

(6) Any proceeds that may accrue from the disposal of any asset acquired pursuant to subsection (5) shall be credited to the account of the Ward from whose funds the asset was acquired and such funds shall be reflected and declared as part of the following years Ward fund for that Ward.

38. (1) All works and services relating to projects under this Act shall be procured in accordance with the provisions of the Public Procurement and Disposals Act 2005.

Procurement of
services and Works.

(2) Regulations made under the Public Procurement and Disposals Act 2005 shall provide for the composition of the ward tender committees for purposes of procurement under this Act.

39. The officer of the Fund in every Ward shall compile and maintain a record showing all receipts, disbursements and actual expenditures on a monthly basis in respect of every project and sub-project under this Act and shall—

Record of receipts and
disbursement.

(a) table such record at a meeting of the Ward Development Fund Committee in every month; and

(b) submit a summary of the record for the year to the Ward Development Fund Committee not later than thirty days after the end of every financial year.

40. All funds received under this Act shall be audited and reported upon by the Auditor-General.

Audit.

41. (1) Projects initiated by a community shall be eligible for support under this Act provided that such projects shall be submitted with the other projects in conformity with the requirements of this Act.

Community initiatives
to be eligible.

(2) Pursuant to subsection (1), a community shall, maintain an elected committee to represent the interests of that community during and after the implementation of the project and such a committee shall conform to the requirements of this Act.

42. The County Management Committee shall ensure that no duplication of projects occur particularly where it is prudent to combine efforts on projects designed to benefit a large section or sector of a community traversing several wards in a County

Duplication of projects to be avoided.

43. (1) The County Management Committee shall, at the beginning of every financial year, prepare and circulate the various Ward Development Fund Committees in the County a list of other government allocations for various projects in the County.

County Management Committee to prepare list.

(2) The County Development Fund Committee shall ensure cooperation with the Ward Development Fund Committee to avoid duplicity of funding to projects within the Ward.

(3) Despite subsections (1) and (2), the existence of another allocation by government to a project in the Ward shall not be used as a reason to deny either approval or funding of any project consistent with this Act.

PART VIII—MISCELLANEOUS PROVISIONS

44. (1) The Member of the County Executive Committee may make regulations for the smooth running of the Fund and such regulations shall be approved by the County Assembly before implementation.

Member of the County Executive Committee to make regulations.

(2) The Member of the County Executive Committee may amend any of the Schedules through a notice in the Gazette, provided that such amendments shall first be approved by the County Assembly before implementation.

45 (1) The provisions of this Act shall be complimentary to any other development efforts by the national government, the county governments or any other agency and nothing in this Act shall be taken or interpreted to mean that an area may be excluded from any other development programmes.

Provisions in the Act are complimentary

(2) For the avoidance of doubt, normal Government development allocations shall continue alongside the projects funded under this Act.

46. Any person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the

Offences and penalties.

manner provided in this Act, shall be guilty of an offence and shall, upon conviction, be liable to imprisonment for a term not less than two years or to a fine not less than two hundred thousand shillings or to both.

47. (1) All complaints and disputes by persons arising due to the administration of this Act shall be forwarded to the County Management Committee in the first instance. Dispute resolution.

(2) Complaints of a criminal nature shall be forwarded by the County Management Committee to the relevant government agencies with prosecutorial powers.

(3) Disputes of a civil nature shall be referred to the County Management Committee in the first instance and where necessary an arbitration panel whose costs shall be borne by the parties to the dispute, shall be appointed by consensus of the parties to consider and determine the matter before the same is referred to court.

(4) Notwithstanding subsection (3), parties shall be at liberty to jointly appoint an arbitrator of their choice in the event of a dispute but where parties fail to jointly agree on an arbitrator, the Member of the County Executive Committee may appoint an arbitrator whose costs shall be jointly borne by the parties.

(5) Subject to this Act, no person in the management of the Fund shall be held personally liable for any lawful action taken in his official capacity or for any disputes against the Fund.

48. (1) The initial capital of the Fund shall consist of:- Transition

- (a) the sum of one billion, two hundred and seventy five million shillings appropriated under the vote of the County Department for Public Works during the 2013-2014 financial year; and
- (b) the sum of one hundred and twenty seven million shillings appropriated under the vote of the County Department for Education during the 2013-2014 financial year;

(2) Notwithstanding sub section (5) of section 4 of this Act, the first meeting of the Ward Development Fund Committee shall be convened within the first thirty days after coming into force of this Act;

(3) Notwithstanding paragraph 2 (4) of the First Schedule, before the members contemplated under section 5 (2) (d) are appointed, the quorum for the County Management Fund Committee shall consist of members appointed under sub sections (2) (a), (b), (c) and (e) of section 5 of this Act.

FIRST SCHEDULE (s. 6)

CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNTY
MANAGEMENT COMMITTEE

1. The Chairperson or a member of the County Management Committee other than *ex-officio* members shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for appointment for not more than two terms;

Tenure of office.

2. (1) A member other than an *ex-officio* member may—

Vacation of office.

(a) at any time resign from office by notice in writing to the Member of the County Executive Committee;

(b) be removed from office by the Member of the County Executive Committee on recommendation of the County Management Committee if the member—

(i) has been absent from three consecutive meetings of the County Management Committee without its permission;

(ii) is convicted of a criminal offence that amounts to a felony under the laws of Kenya;

(iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months; or

(iv) is otherwise unable or unfit to discharge his functions.

(2) The Chairperson shall not be removed from office unless such removal is in accordance with sub paragraph (1).

3. (1) The County Management Committee shall meet not less than six and not more than eighteen times in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.

Meetings.

(2) Notwithstanding sub paragraph (1), the Chairperson may, and upon requisition in writing by at

least five members shall, convene a special meeting of the County Management Committee at any time for the transaction of the business of the County Management Committee.

(3) Unless three-quarters of the total members of the County Management Committee otherwise agree, at least fourteen days' written notice of every meeting of the County Management Committee shall be given to every member of the County Management Committee.

(4) The quorum for the conduct of the business of the County Management Committee shall be five members.

(5) The Chairperson shall when present, preside at every meeting of the County Management Committee but the members present shall elect one member to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted there at.

(6) Unless a unanimous decision is reached, a decision on any matter before the County Management Committee shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the County Management Committee shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the County Management Committee may determine its own procedure and the procedure for any committee of the County Management Committee and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

4. (1) The County Management Committee may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

Committees of the
County Management
Committee.

(2) The County Management Committee shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.

(3) The County Management Committee may where it deems appropriate, invite any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the County Management Committee.

5. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration. Disclosure of interest.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the County Management Committee who contravenes subparagraph (1) shall cease to be a member of the County Management Committee upon direction of the Member of the County Executive Committee.

6. (1) The common seal of the County Management Committee shall be kept in such custody as the County Management Committee may direct and shall not be used except on the order of the County Management Committee. Common seal.

(2) The affixing of the common seal of the County Management Committee shall be authenticated by the signature of the Chairperson, the Chief Executive Officer and one member nominated by the County Management Committee and any document not required by law to be made under seal and all decisions of the County Management Committee may be authenticated by the signatures of the Chairperson, the Officer Administering the Fund and that member nominated by the County Management Committee.

(3) The common seal of the County Management Committee when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order

or authorization by the County Management Committee under this section shall be presumed to have been duly given.

7. The provisions of this Schedule shall apply to the conduct of the business of the Ward Development Fund Committee but only where no specific provisions have been made in this Act, and only in so far as they do not constitute a contradiction or negation of the provisions of the Act.

Schedule to apply to
Ward Development
Fund Committees.

3

2014

Nairobi City County Wards Development Fund

No. 1

SECOND SCHEDULE (s. 12(5))

PROJECT RE-ALLOCATION FORM

Ward No: Name Financial year

Project No.	Project Title	Amount allocated (Kshs)	Amount disbursed (Kshs)	Balance (Kshs)	Unspent to be re-allocated

Signature Date

Name Position

THIRD SCHEDULE (s. 21)
WARD PROJECTS SUBMISSION FORM

Ward No. Ward Name Financial year

Chairperson Ward Devt. Fund Committee Signature Date

Serial	Name of Project	Amount allocated
Total for the Financial Year		

No. 1

Nairobi City County Wards Development Fund

2014

FOURTH SCHEDULE (s. 22)
PROJECT DESCRIPTION FORM

Ward No: Ward Name County

Project Number

Project Title Sector

Status of projects (tick one) New Extension On-going ...

Rehabilitation

Brief statement on project status at time of submission

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

Financial year 1st July To 30th June

Original Cost estimates, in Ksh. dated

Amount allocated last financial year

Person completing form: Signature

Name Position

Date

00

00

SPECIAL ISSUE

Nairobi City County Gazette Supplement No. 7 (Acts No. 2)



REPUBLIC OF KENYA

**NAIROBI CITY COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2014

NAIROBI, 14th May, 2014

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PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

THE NAIROBI CITY COUNTY WARDS
DEVELOPMENT FUND (AMENDMENT) ACT, 2014

No. 2 of 2014

Date of Assent: 16th April, 2014

Date of Commencement: 23rd April, 2014

AN ACT of the Nairobi City County Assembly to amend the Nairobi City County Wards Development Fund Act, 2014.

ENACTED by County Assembly of Nairobi City as follows—

1. This Act shall be cited as the Nairobi City County Wards Development Fund (Amendment) Act, 2014. Short title.

2. Section 33 of the Nairobi City County Wards Development Fund Act, 2014, in this Act referred to as the “principal Act” is amended as follows:— Amendment of section 33 of No 1 of 2014.

(a) in subsection (1) (a) by deleting the expression “nominated by the elected Member of the County Assembly” and substituting therefor the expression “nominated by the members of the Ward Fund Committee”;

(b) in subsection (2) by deleting subsection (2) and substitution therefor with the following new subsection:

(2) The seven (7) persons referred to in subsection (1) (a), (b), (c), (d) and (e) shall be elected through the following procedure—

(a) within thirty (30) days of swearing in of a new Member of a County Assembly for a particular Ward, the County Management Committee through the Officer Administering the Fund shall convene open public meetings of registered voters in each of the elective Ward;

(b) each ward shall then elect the seven (7) persons referred to in subsection (1) (a), (b), (c), (d) and (e) whose names shall be forwarded to the Officer Administering the Fund;

- (c) upon conclusion of the election of the seven (7) persons referred to in subsection (1) (a), (b), (c), (d) and (e) in the manner stipulated in paragraph (a), the officer of the Ward Development Fund Committee shall forward the names of the members of the Ward Development Fund Committee to the Officer Administering the Fund for onward transmission to the Member of the County Executive Committee for gazettelement.

THE NAIROBI CITY COUNTY WARDS DEVELOPMENT FUND
(AMENDMENT) ACT, 2015

AN ACT of the County Assembly of Nairobi City to amend the Nairobi City County Wards Development Fund Act, 2014.

ENACTED by County Assembly of Nairobi City as follows—

Section

1. This Act shall be cited as the Nairobi City County Wards Development Fund (Amendment) Act, 2015.

Amendment of section 2 of No 1 of 2014

2. Section 2, of the Nairobi City County Wards Development Fund Act, 2014, in this Act referred to as the “Principal Act” is amended as follows—

(a) by deleting the definition of the expression “ward fund account”;

Amendment of section 5 of No 1 of 2014

3. Section 5 of the Principal Act is amended as follows—

(a) in subsection 2(a) by deleting the expression “Deputy Chief Officer” and substituting therefore with the word “Director.”

(b) in subsection 2(b) by deleting the expression “Deputy Chief Officer” and substituting therefore with the word “Director.”

Amendment of section 8 of No 1 of 2014

4. Section 8 of the Principal Act is amended as follows:-

(a) in subsection (3) (a) by deleting the expression “after approval by the County Assembly” appearing immediately after the word “committee”;

Amendment of section 16 of No 1 of 2014

5. Section 16 of the Principal Act be deleted;

Amendment of section 17 of No 1 of 2014

6. Section 17, Principal Act is amended as follows:-

(a) by deleting subsection (2);

Amendment of section 37 of No 1 of 2014

7. Section 36, of the Principal Act is amended as follows:-

by deleting subsection (1)(d);

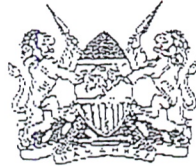
Amendment of First Schedule (s.6) of No 1 of 2014

8. First Schedule of the Principal Act is amended as follows:-

(a) subsection 3(1) of the Schedule be amended by deleting the word “eighteen” and substituting thereof with the expression “thirty six.”

SPECIAL ISSUE

Nairobi City County Gazette Supplement No. 9 (Acts No. 3)



REPUBLIC OF KENYA

**NAIROBI CITY COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2016

NAIROBI, 21st July, 2016

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THE NAIROBI CITY COUNTY WARDS DEVELOPMENT FUND
(AMENDMENT) ACT, 2016

No. 3 of 2016

Date of Assent: 8th July, 2016

Date of Commencement: 21st July, 2016

AN ACT of the County Assembly of Nairobi City to amend the Nairobi City County Wards Development Fund Act, 2014.

ENACTED by the County Assembly of Nairobi City as follows—

Section

1. This Act shall be cited as the Nairobi City County Wards Development Fund (Amendment) Act, 2016.

Amendment of section 2 of No 1 of 2014

2. Section 2, of the Nairobi City County Wards Development Fund Act, 2014, in this Act referred to as the “Principal Act” is amended as follows—

(a) by inserting the following new definition in alphabetical sequence;

“Youth” means a person who has attained the age of eighteen years but has not attained the age of thirty five years.

Amendment of section 5 of No 1 of 2014

3. Section 5, of the Principal Act is amended as follows—

(a) By deleting sub-clause 5 (2)(c); ✓

(b) In sub-clause 5(2)(e) by deleting the expression “Member of the County Executive Committee responsible for legal matters” appearing immediately after the word “the” and substituting with the expression “County Attorney” thereof.

Amendment of section 7 of No 1 of 2014

4. Section 7 of the Principal Act is amended as follows—

(a) In sub-clause 7(a), by deleting the expression “in every ward” appearing immediately after the word “funds in” and substituting with the expression “from the Fund”;

Amendment of section 11 of No 1 of 2014

5. Section 11, of the Principal Act is amended as follows—

(a) By deleting subsection 11(3);

(b) By deleting subsection 11(5);

Amendment of section 12 of No 1 of 2014

6. Section 12, of the Principal Act is amended as follows—

- (a) In subsection 12(3) by deleting the expression “credited to the account of the Ward from which the funds were withdrawn” appearing after the expression “to the Fund” and substituting with the expression “shall be allocated to any other project in the same Ward” thereof;

Amendment of section 14 of No 1 of 2014

7. Section 14 of the Principal Act be deleted.

Amendment of section 17 of No 1 of 2014

8. Section 17, of the Principal Act is amended as follows—

- (a) In section 17(4) by deleting the words “separate accounts of the wards and” appearing immediately after the words “shall submit” and substituting with the word “accounts of” thereof.

Amendment of section 20 of No 1 of 2014

9. Section 20, of the Principal Act is amended as follows—

- (a) In subsection 20 (1) by inserting the words “in concurrence with County Assembly” immediately after the words “County Executive Committee”.

Amendment of section 33 of No 1 of 2014

10. Section 33 of the Principal Act be amended as follows—

- (a) in subsection (1)(b) by substituting the expression “two persons” appearing immediately after the word “representing” with the expression “one person” and deleting the expression “of who one shall be a youth”.
- (b) in subsection (1)(c) by substituting the expression “two persons” appearing immediately after the word “representing” with the expression “one person” and deleting the expression “of who one shall be a youth”.

Amendment of section 36 of No 1 of 2014

11. Section 36, of the Principal Act is amended as follows—

- (a) By deleting subsection 36 (1) (d).

Amendment of section 37 of No 1 of 2014

12. Section 37, of the Principal Act is amended as follows—

- (a) In subsection 37 (6) by deleting the expression “from whose funds the asset was acquired and such funds shall be reflected and declared as part of the following years Ward fund for that Ward” appearing immediately after the expression “account of the ward” and substituting the expression “account of the Ward” with the expression “bank account of the fund”.

Amendment of section 38 of No 1 of 2014

13. Section 38, of the Principal Act is amended by;

- (a) In subsection 38(1) by deleting the expression “Public Procurement and Disposal Act 2005” appearing immediately after the expression “with the provisions of the” and substituting it thereof with the expression “Public Procurement and Disposal Act 2015”.

In subsection 38(2) by deleting the expression “Public Procurement and Disposal Act 2005” appearing immediately after the expression “regulations made under the” and substituting it thereof with the expression “Public Procurement and Disposal Act 2015”.

KAKAMEGA COUNTY ASSEMBLY

COUNTY GOVERNMENT KAKAMEGA COAT OF ARM



**TO : THE SENATE OF KENYA – WARD FUND DEVELOPMENT
COMMITTEE**

**FROM : THE COUNTY ASSEMBLY OF KAKAMEGA – WARD
FUND DEVELOPMENT COMMITTEE**

SUBMISSION OF THE PUBLIC MEMORANDUM ON THE COUNTY WARDS DEVELOPMENT EQUALISATION BILL, 2018

Kakamega County Assembly through the Ward Fund Development Committee proposes that the Bill to establish a County Wards Development Fund consisting of at least twenty percent of the revenue allocated to the respective county government in each year and such other monies that may accrue to the Fund

The County Assembly proposes that the Ward Development Fund be administered by the Fund Administrator as set out in the Public Finance Management (PFM) Act.

Projects' bank accounts for the allocation and disbursement of funds from the Fund should be opened separately by both the County Government and the Ward Development Fund Committee with respect to the monies from the Fund.

Submission of Ward projects proposals should be done by elected Members of the County Assembly (MCAs) in consultation with the committees. The format for presentation of projects to be undertaken under the Fund and also the manner of sharing of the monies from the Fund should be based on an equal eighty percent equality and subsequent twenty percent based on population of each Ward.

Projects must be development based and there shall be a minimum number of projects to be funded so as to ensure distribution of projects within the Ward. The eligibility of some projects for funding such as part funding will be allowed.

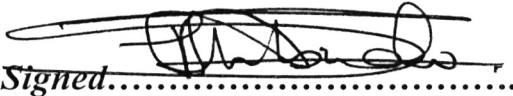
There is a proposal for establishment of Ward Development Fund Committee with outlined composition, functions of the committee and maximum allocation and restrictions. More so, there is provision for the establishment of a County Assembly Select Committee by the County Assembly known as the Ward Fund Committee in accordance with respective County Assembly's Standing Orders with definite functions particularly to ensure implementation of the development projects.

Further proposal from the Kakamega County Assembly is that the Bill provides for the procedure to be followed in the implementation of the Ward based projects. It is proposed that the County Management Committee and the Ward Development Committee ensures implementation of the projects in the wards.

In conclusion therefore, the committee observes that County Wards Development Equalization bill, 2018 as proposed by the Senate tends to empower the executive wing of the county governments more than the Legislative wing, the County Public Service Boards in particular. For instance, part III section 17 and 22 of the Bill.

Submitted by the chairperson of Ward Fund Development Committee, Kakamega County Assembly in presence of the vice-chair of the said committee.

Dated this ^{18th} Day of ^{APRIL} 2018


Signed.....

Hon. LYSTON S. AMBUNDO
Cell phone: +254 722-816-700
Email: ambundo2013@gmail.com

**THE KAKAMEGA COUNTY WARD DEVELOPMENT
FUND BILL, 2018**

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2. Interpretation.
3. Object and purpose.

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THE KAKAMEGA COUNTY WARD DEVELOPMENT FUND BILL, 2018

A Bill for AN ACT of the Kakamega County Assembly to provide for the establishment, administration and use of the Ward Development Fund and for connected Purposes

ENACTED by County Assembly of Kakamega County as follows-

PART I-PRELIMINARIES

Short title and commencement

1. This Bill may be cited as the Kakamega County Ward Development Fund Bill, 2018, and shall come into operation upon Gazettement in the Kenya Gazette.

Interpretation

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

“Assembly” means Kakamega County Assembly;

“Community” means residents of a particular area of a Ward, within Kakamega County and having common interests;

“County Management Committee” means the County Wards Development Fund Management Committee established under clause 5;

“Fund” means the Ward Development Fund established under clause 4;

“Fund Account” means an account opened under clause 14 of the Bill.

“Member of the County Executive Committee” means the Member of the County Executive Committee responsible for finance and planning;

“Fund Administrator” means the person appointed as such under clause 8;

“Officer of the Fund” means an officer seconded by the Member of County Executive Committee to the Ward under clause 9;

“Project” means an eligible development project as described in the Bill.

“Ward Development Committee” means the committee established under clause 32;

“Ward Fund Account” means the account maintained for every ward in accordance with clause 15.

“Select Committee” means the County Assembly committee responsible for the Ward Development.

Object and purposes of Bill

3. The object and purpose of this Bill is to further the objectives of the provisions of Article 185, 186 and 207 of the Constitution and section 116 of the Public Finance Management Act, 2012 and to ensure that a specific portion of the county annual budget is devoted to the wards for purposes of development and in particular the fight against poverty at the ward level.

PART II- ESTABLISHMENT AND ADMINISTRATION OF THE FUND

Establishment of the fund

4. (1) There is established a Fund to be known as the Kakamega County Ward Development Fund which shall be administered by the Fund Administrator.

(2) The Fund shall consist of-

(a) an amount of not less than twenty percentum of all the development budget of the Kakamega County in every financial year to be released every quarter of the financial year;
(b) any monies accruing to, donated, lent or received by the Fund from any other lawful source.

(3) The amount referred to insub clause 2(a) shall be calculated on the basis of the current County budget as approved by the County Assembly.

(4) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained for the purpose for which the Fund is established.

(5) There shall be paid out of the Fund payments in respect to any expense incurred in pursuance of the provisions of this Bill.

Establishment of the County Management Committee.

5. (1) There is established a committee to be known as The Kakamega County Ward Development Fund Management Committee

(2) The County Management Committee shall consist of—

(a) the Chief Officer of the County Department for the time being responsible for matters relating to finance and planning;

(b) chief officer of the County Department for the time being responsible for matters relating to public works.

(c) four persons, qualified in matters relating to finance, accounting, engineering, economics, community development, or law, competitively and transparently recruited by the Public Service Board and appointed by the member of the County Executive Committee.

(d) the Officer Administering the Fund who shall be an ex-officio member.

(e) the persons under sub clause 2 (b) shall meet the requirements of chapter six of the Constitution.

(3) The Member of the County Executive Committee shall appoint the Chairperson of the County Management Committee from amongst the four persons appointed under sub clause5 (c).

Conduct of business and affairs of the County Management Committee

6. The conduct of the business and affairs of the County Management Committee shall be as provided for under the First Schedule.

Functions of the County Management Committee.

7. The functions of the County Management Committee shall be to-

(a) ensure allocation and disbursement of funds in every Ward;

(b) ensure prudent management of the Fund;

- (c) receive and discuss the annual reports from the Wards;
- (d) ensure the compilation of proper records and reports from the Wards;
- (e) ensure timely submissions to County Assembly of any report, records and information as may be required from time to time;
- (f) consider project proposals submitted by various wards and make appropriate recommendations to the County Assembly through the member of County Executive Committee;
- (g) perform any such other functions as may be necessary for the furtherance of the object and purpose of this Bill.

*Fund
Administrator*

- 8.** (1) There shall be a Fund Administrator who shall be designated by member of the County Executive Committee.
- (2) The person so designated shall have—
- (a) at least a university degree in finance, accounting, engineering, economics, community development, law or a related field from a recognized university;
 - (b) at least five years working experience in public finance or a relevant field.
 - (c) shall meet the requirements of chapter 6 of the constitution.
- (3) The Fund Administrator shall be the chief executive officer of the Fund and Secretary to the County Management Committee
- (4) the powers and functions of the Fund Administrator shall be as provided for under section 116 (3), (4) and (7) of the Public Finance Management Act, 2012.
- (5) (1). the term of the Fund Administrator shall be three years;
 (2). The Fund Administrator shall not hold office for more than two terms.

*Secondment
of
Staff.*

- 9.** (1) The Member of the County Executive Committee shall, upon request by the County Management Committee, ensure secondment to the Fund officers from the county Public Service Board.

- (2) The County Management Committee may designate any of the officers seconded under (1) to be Officer of the Fund in respect of one or more wards as may be appropriate.

- 10.** The County Management Committee may establish sub committees from time to time for effective execution of the committees work.

*Establishment
of
sub
Committees.*

PART III—FINANCIAL PROVISIONS.

*Disbursement
From the Fund.*

- 11.** (1) Each and every disbursement from the Fund shall be approved and minuted by the County Management Committee.
- (2) All disbursements from the Fund shall be for specific projects as submitted by the wards in accordance with the procedures outlined in the Bill.
 - (3) All disbursements shall be made through the Ward bank accounts maintained for every Ward in accordance with clause 16 of the Bill.
 - (4) Notwithstanding sub clause (3), payments for a joint project under clause 28 (4), may be made directly to a supplier or to an account established for the purpose after approval by the County Management Committee.
 - (5) The record of the amounts received by each Ward and the record of expenditure of amounts so received shall be submitted by Ward Development Committee to the County Management Committee within thirty days after close of the financial year together

with a copy of bank statements and no disbursements for the succeeding financial year shall be made into the accounts until the said records are duly received

(6) The County Management Committee shall set out general conditions and requirements before funds are released, to ensure efficient and effective management of resources.

Allocation of funds.

12. (1) The Member of the County Executive Committee in liason with the County Management Committee shall in each financial year allocate funds to each Ward in accordance with clause 25 of theBill.

(2) Once funds are allocated for a particular project, they shall remain allocated for that project and may only be re-allocated for any other purpose during the financial year with the approval of the County Management Committee as set out in the Second Schedule.

(3) If for any reason a particular project is cancelled or discontinued during the financial year, funds allocated for such a project shall be returned to the Fund and credited to the account of the Ward from which the funds were withdrawn.

(4) Unspent funds shall be allocated to any eligible project and such project may be new or ongoing at the end of the financial year.

(5) For the avoidance of doubt, allocation as set out in the Second Schedule shall be made for the current financial year and every previous financial year in which some funds remain unspent.

Funds to be retained in the Fund.

13.(1) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be returned to the Fund and applied in accordance with clause 12 (5) of theBill.

(2) All funds allocated to a Ward shall be cumulative and shall be carried forward from one financial year to the next, including funds returned into the accounts in accordance with clause 12(3) or funds which are not utilized for whatever reasons.

Bank account of the Fund.

14. (1) A bank account of the Fund shall be opened and maintained by the County Treasury.

(2) The signatories to the account of the Fund maintained in accordance with sub clause (1), shall be the Fund Administrator and two other persons appointed by the County Management Committee from amongst its members.

(3) The signing instructions shall be such that the signature of the Fund Administrator shall be mandatory on all payment, cheques or instruments intended for actual release of money from the Fund, plus any one of the other two signatories.

Ward Fund Account.

15. (1) For the purpose of disbursement of funds under theBillthere shall be opened and maintained a Ward Fund Account for each Ward at any commercial bank, approved by the Member of the County Executive Committee into which all funds shall be kept and such an account shall be known by the name of the Ward for which it is opened and each Ward shall maintain only one account.

(2) The bank account opened under sub clause (1), shall be separate from that of the County Treasury.

(3) At least three signatories shall be required for every cheque or instrument for actual payment or withdrawal of funds from a Ward Fund Account and the signing instructions shall be such that there shall be at least one signature of an officer seconded by the County Management Committee and at least two signatures of two members of the Ward Development Committee.

(4) The Officer of the Fund shall hold the authority to incur expenditure of the funds in the Ward Fund Account.

- (5) Funds from the Ward Fund Account shall only be withdrawn as disbursements for a particular project in accordance with clause 11 of the Bill.
- (6) Every payment or instruction for payment out of the Ward fund account shall be strictly on the basis of a minuted resolution of the Ward Development Committee.
- (7) All receipts, savings and accruals to the Ward Fund Account and the balances at the end of each financial year shall be returned to the Fund Account.
- (8) All unutilized funds shall remain in the Ward Fund Account and no investment elsewhere shall be permitted, provided that funds meant for a project that is cancelled or discontinued shall be returned to the Fund Account.
- (9) Any accruing revenues, interest and liabilities from any Ward Fund Account shall be declared to the County Management Committee together with the annual returns.

Record of disbursements to be kept.

16. (1) An accurate record of all disbursements made for projects to every Ward shall be kept and updated every month by the County Management Committee.
- (2) The disbursement of funds to the Ward Fund Account shall be effected at the beginning of the first quarter of each financial year with an initial amount equivalent to fifteen per centum of the annual development allocation for the Ward and thereafter the Ward Fund Account shall be replenished in three equal installments at the beginning of the second, third and fourth quarters of the financial year.
- (3) The Chairperson of the County Management Committee shall submit to the County Executive Committee Member for the subsequent submission to the assembly an annual report on the activities, operations and expenditure under the Bill.
- (4) At the end of every financial year the County Management Committee shall submit separate accounts of the wards and the County Management Committee to the Auditor General.
17. (1) The personal emoluments of officers of the County Government working or involved in the management of the Fund shall be determined by the Member of the County Executive Committee after consultation with the County Management Committee upon the advice of the Salaries and Remuneration Commission and shall be provided under the recurrent expenditure of the County Government.
- (2) Out of pocket expenses incurred by any person officially involved in the management of the Fund or the implementation of projects under the Fund, including public officers may be reimbursed but not more than three percent of the total allocation in the financial year may be used for this purpose.
- (3) Sitting and other allowances for the members of the County Management Committee and the Ward Development Fund Committees shall be fixed by the Member of the County Executive Committee upon the advice of the Salaries and Remuneration Commission.

Remuneration and allowances.

PART IV—SUBMISSION OF WARD PROJECT PROPOSALS

Submission of projects

18. (1) The list of proposed Ward based projects to be covered under this Bill shall be submitted by the chairperson of the Ward Development Committee to the County Management Committee after approval by the Ward Development Committee for that Ward.
- (2) The County Management Committee shall receive and compile the list of proposed Ward projects submitted to it under this Bill and grant the necessary approval after requirements under this Bill have been met.

*Submission
deadline*

19. (1) The list of the proposed Ward projects shall be submitted to the County Management Committee before the end of the month of January in each year or such other month as may be determined by the Member of the County Executive Committee in order to ensure timely inclusion of the projects in the annual Government budget of a particular financial year.

(2) Where the chairperson of the Ward Development Committee fails to submit the list of Ward based projects to the County Management Committee within the stipulated time in (1), the list shall be deemed to have been submitted to the County Management Committee upon the lapse of the stipulated time.

*Submission
Form.*

20. (1) The list of projects shall be submitted on a Ward Projects Submission Form set out in the Third Schedule to this Bill accompanied by minutes of the Ward Development Fund Committee approving the projects.

(2) All projects proposed for every Ward shall be listed in the Form together with the cost estimates, amounts allocated and amounts disbursed to such projects.

*Projects
description
Form.*

21. For every project listed in the Form, there shall be attached a Project Description Form set out in the Fourth Schedule.

*Approval of
projects*

22. (1) The list of projects received by the County Management Committee pursuant to clause 19 of this Bill shall be considered at a meeting of the County Management Committee.

(2) The County Management Committee shall scrutinize and approve for funding those project proposals that are consistent with the Bill.

(3) Where the County Management Committee does not approve a proposal submitted to it under this clause, it shall refer the matter back to the Wards Development Fund Committee giving reasons as to why it has declined to approve the proposal.

*Discretion of
Ward
Development
Fund
Committee.*

23. The allocation of funds to various projects in each Ward shall be the responsibility of the Ward Development Fund Committee to be exercised at its own discretion within the provisions of this Bill.

*List to be
Serialized*

24. The projects listed for each Ward shall be numbered by the County Management Committee and the serial numbers of all projects in a Ward shall bear the number of the Ward as delineated by the Independent Electoral and Boundaries Commission in order to ensure that a project retains the same serial number every year until its completion.

*Basis
budget
ceiling.*

25. The budget ceiling, for each Ward shall be –

(1) eighty percent of the amount specified

in clause 4 (2) (a) divided equally amongst all wards;

(2) twenty percent of the amount specified in clause 4 (2) (a) divided equitably based on the population of each ward.

*Criteria for
Projects.*

26. (1) The types of projects submitted for funding under this Bill shall comply with the provisions of this Bill.

- (2) It shall be the responsibility of the Ward Development Committee to ensure that the list of projects submitted for funding comply with the provisions of the Bill and their total cost does not exceed the allowable ceiling for the particular Ward or is not below that ceiling.
- (3) If the list of projects submitted for funding is in contravention of (2) the same shall be referred back to the Ward Development Committee for amendment and re-submission.
- (4) Whenever the amount for projects in a Ward is less than the allowable ceiling the shortfall shall be indicated as unallocated amount against that particular Ward on the list to be forwarded to the Member of the County Executive Committee.

PART V-TYPES OF PROJECTS

Projects to be community based.

27. (1) Projects under this Act shall-

- (a) be in respect of those falling within the functions of the county government as contemplated under Part 2 of the Fourth Schedule to the Constitution; and
- (b) be community based in order to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants of a particular area.
- (2) Any funding under this Bill shall be for a whole project or a defined phase, of a project and may include the acquisition of land and buildings.
- (3) All projects shall be projects as defined under this Bill and may include costs related to studies, planning and design or other technical input for the project but shall not include recurrent costs of a facility.
- (4) Funds provided under this Act shall not be used for the purpose of supporting political bodies or political activities or for supporting religious bodies or religious activities.
- (5) A Ward Development Committee office project shall be considered as a development project for purposes of the Act and may include appropriate furniture and equipment for the office.
- (6) Each of the projects shall be listed in the Third Schedule and, where applicable, the activities under sub clause 1(7) of this clause.
- (7) The allocation may be used as follows-
 - (a) eighty five percent of each Ward's annual allocation may be used for community based development projects identified by the local community;
 - (b) an amount not exceeding three per cent may be used as expenses for running the Ward which may include rent and utilities, staff salaries and committees allowances;
 - (c) three percent of each ward annual allocation may be used for sporting activities;
 - (d) three percent of each Ward annual allocation may be used for environmental activities;
 - (e) three percent of each Ward annual allocation may be used on capacity building;
 - (f) purchasing, running and maintenance of motor vehicles and equipment must not take more than three percent of the total annual allocation.

Number of Projects

- 28.** (1) The number of projects to be included in the Ward Projects Submission Form specified in the Third Schedule shall be a minimum of five and a maximum of twenty five for every Ward in each financial year.
- (2) Wards with unspent funds at the end of the financial year shall submit new proposals to the County Management Committee for approval in accordance with clause 12 of this Bill.
- (3) Project activities of a similar nature in a particular Ward may be combined and considered as one project.

- (4) Wards may pool resources together for joint projects provided that the decision for such joint projects shall first be approved by the Ward Development Committee of each of the participating wards and shall be reflected on the projects listed for each of the participating wards.
- (5) Where wards have joint projects, the two wards shall form sub committees to co-ordinate such projects.

Cost estimates to be realistic.

29. (1) The Ward Development Committee may make appropriate consultations with the relevant Government departments. This is done to ensure that cost estimates for the projects are as realistic as possible.
- (2) The Ward Development Committee shall rank the projects in order of priority and whenever, in the opinion of the County Management Committee, the total cost of the projects listed exceed the ceiling for a particular Ward, then the order in which they are listed shall be taken as the order of priority for purposes of allocation of funds, provided that ongoing projects shall take precedence over all other projects.

Personal awards to be

30. (1) A project or any part thereof which involve personal awards to any person in cash or in kind, shall be excluded from the list of projects submitted under clause 18 (2) of this Bill.

part funding to be permitted.

31. For the purposes of this Bill, the County Management Committee may consider part funding of a project financed from sources other than the Fund so long as the other financiers or donors of that project have no objection and provided that the part funding for the project availed pursuant to this Act shall go to a defined unit or any part thereof or phase of the project in order to ensure that the particular portion defined in the allocation is completed with the funds allocated under this Bill.

PART VI—THE WARD DEVELOPMENT FUND COMMITTEE AND THE ASSEMBLY SELECT COMMITTEE

Establishment of Ward Development Fund Committee.

- 32(1) There shall be a Ward Development Committee at every Ward which shall be constituted by the County Executive Member in consultation with the elected Member of the County Assembly within thirty days after taking of oath of office by the Member of the County Assembly.

Composition of the Ward Development Fund Committee

33. (1) The membership of the Ward Development Committee shall comprise-
- (a) the officer of the fund who shall be the secretary
 - (b) the ward administrator
 - (c) one person representing the male in the Ward
 - (d) one person representing the female in the Ward
 - (e) three persons representing the special interest groups including the youth, marginalized and persons living with disabilities
 - (f) two persons representing religious organizations within the ward.
 - (g) one person representing non governmental organizations within the ward.
- (2) the members in sub clause (1) shall elect a chair person amongst themselves.

- (3) The Chairperson of the Ward Development Committee in consultation with the Member of the County Assembly for the Ward, the ward administrator and the village administrator for every village shall within the first year of a new County Assembly and at least once every two years thereafter, convene open forum public meetings in every ward in the County to deliberate on development matters in the Ward.
- (4) Each village shall come up with a list of priority projects to be submitted to the Ward Development Committee
- (5) The term of office of the members of the Ward Development Committee shall be three years.
- (6) The secretary of Ward Fund Committee shall be the custodian of all records and equipment of the Ward during the term of the county assembly and in times of transitions.
- (7) The Ward Development Committee shall meet at least six times in a year and not more than twenty four times.
- (8) The committee may employ a maximum of 3 staff through the County Service Board, and such staff shall have knowledge in information and communications technology, accounting or social sciences.
- (9) Staff employed under sub clause (8) shall be responsible for project monitoring and evaluation, project co-ordination, proper keeping of records and any other function as shall be assigned from time to time.
- (10) the staff shall be remunerated from the funds allocated for administration and recurrent expenses.

34.(1) Each village within the ward shall come up with development proposals, discuss them, identify on priority basis a list of projects to be submitted to the Ward Development Fund Committee

Functions of the Ward Development Fund Committee.

- (2) The Ward Development Committee shall deliberate on project proposals within the Ward and any other project which the committee considers beneficial to the Ward, then draw up a priority project list both immediate and long term.
- (3) The quorum of the Ward Development Committee shall be five members.

35. (1) the County Assembly shall establish a select committee to be known as the Ward Development Committee.

Functions of the County Assembly Ward Development Committee.

- (2) The functions of the County Assembly Ward Development Committee shall be to—
 - (a) consider and recommend to the County Assembly any matter of import concerning ward development.
 - (b) oversee the implementation of this Bill.
 - (c) submit annually a report to the County Assembly on the implementation status of the Bill.
 - (d) propose any amendments to the Bill.
 - (e) continually advise the assembly on all issues relating to development at the ward level;
 - (f) perform any such other function necessary for development at the ward level.

36. (1) The County Management Committee shall on quarterly basis, submit a report to the County Assembly Ward Development Committee detailing—

Quarterly reports on projects and disbursements.

- (a) a summary of the project proposals received from the wards in the preceding quarter and indicating the approval status of such projects;
- (b) a summary of the status of disbursements of funds to the wards for that preceding quarter;

- (c) a summary of the status of disbursements from the Treasury to the County Account; and
- (d) any other necessary information as shall be required from time to time.
- (2) The County Management Committee shall ensure that the list of projects forwarded to it by each ward is, upon approval, funded in accordance with the Bill.

PART VII—IMPLEMENTATION OF PROJECTS

Project Management Committee to implement

- 37. (1) The Ward Development Committee and the County Management Committee shall be responsible for monitoring the implementation of projects under this Bill
- (2) Where a project in a Ward involves the purchase of equipment, such equipment shall remain in the exclusive use of that Ward.
- (3) All assets purchased under this Bill for use by the Ward Development Committee shall be the property of the County Government of Kakamega.
- (4) No asset or equipment acquired under this Bill shall be disposed of by the County Government without the prior approval of the County Management Committee.
- (5) Any proceeds that may accrue from the disposal of any asset acquired under sub clause (4) shall be credited to the account of the Ward from whose funds the asset was acquired and such funds shall be reflected and declared as part of the following years Ward fund for that Ward.

Procurement of services and Works.

- 38. (1) All works and services relating to projects under this Act shall be procured in accordance with the provisions of the current Public Procurement and Disposals Act.
- (2) Regulations made under the Public Procurement and Disposals Act shall provide guidelines in relation to the composition of the ward tender committees for purposes of procurement under this Bill.

Record of receipts and disbursement.

- 39. The Officer of the Fund in every Ward shall compile and maintain a record showing all receipts, disbursements and actual expenditures on a monthly basis in respect of all projects under this Bill and shall—
 - (a) table such record at a meeting of the Ward Development Committee
 - (b) submit a summary of the record for the year to the Ward Development Committee not later than thirty days after the end of every financial year.

Audit.

- 40. All funds received under this Bill shall be audited and reported upon by the Auditor-General.

Community initiatives to be eligible.

- 41. (1) Projects initiated by a community shall be eligible for support under this Bill.
- (2) projects in sub clause (1) shall be implemented in accordance to this Bill.
- (3) A community shall have a maximum of 3 representatives representing the interests of that community during and after the implementation of the project in sub clause (1).

Duplication of projects to be avoided.

- 42. The County Management Committee shall ensure no duplication of projects within a ward and may combine projects that traverse more than one ward.

County Management Committee to prepare list.

- 43.** (1) The County Management Committee shall, at the beginning of every financial year, prepare and circulate to the various Ward Development Committee a list of other government allocations for various projects in the County.
- (2) The Ward Development Committee shall liaise with the Constituency Development Fund Committee to avoid duplicity of funding of projects within the Ward.
- (3) In spite of (1) and (2), the existence of another allocation by government to a project in the county shall not be a reason to deny approval or funding of any project under this Bill.

PART VIII—MISCELLANEOUS PROVISIONS

Member of the County Executive Committee to Make regulations

- 44.** The Member of the County Executive Committee may make regulations for the better implementation of the object and purpose of this Bill.

- 45**(1) The provisions of this Bill shall be complimentary to any other development efforts by the national government, the county government or any other agency and nothing in this Bill shall be construed to mean that an area may be excluded from any other development programmes.

- (2) For the avoidance of doubt, other Government development allocations shall continue alongside the projects funded under this Bill.

Offences and penalties.

- 46.** Any person who misappropriates any funds or assets of the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Bill, commits an offence and shall, upon conviction, be liable to imprisonment for a term of not less than two years or to a fine of not less than five hundred thousand shillings or both.

Dispute resolution.

- 47.** (1) All complaints and disputes arising in respect with the administration of the fund shall be handled by the member of the County Executive Committee.

- (2) the member of the County Executive Committee shall submit an annual report to the County Assembly in relation to all complaints and disputes in sub clause (1) and the current status of such complaints and disputes.

Transition

- 48**(1) The initial capital of the Fund shall be such a sum as set aside for that purpose by the County Executive Committee Member with the approval of the County Assembly.

- (2) Notwithstanding sub clause (1), If this Bill comes into operation mid-way in a financial year, the chairman for budget and appropriation select committee at the assembly shall as soon as possible ensure that the funds for the projects under this Bill are factored in the county budget estimates.

**CONDUCT OF BUSINESS AND AFFAIRS OF
THE COUNTY MANAGEMENT COMMITTEE**

Tenure of
office.

1. The Chairperson or a member of the County Management Committee other than *ex-officio* members shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for appointment for not more than two terms;

Vacation
of office.

2. (1) A member other than an *ex-officio* member may—
 - (a) at any time resign from office by notice in writing to the Member of the County Executive Committee;
 - (b) be removed from office by the Member of the County Executive Committee on recommendation of the County Management Committee if the member—
 - (i) has been absent from three consecutive meetings of the County Management Committee without its permission;
 - (ii) is convicted of a criminal offence that amounts to a felony under the laws of Kenya;
 - (iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months; or
 - (iv) is otherwise unable or unfit to discharge his functions.

- (2) The Chairperson shall not be removed from office unless such removal is in line with clause (1)(b).

Meetings

3. (1) The County Management Committee shall meet not less than six times and not more than eighteen times in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.
 - (2) Notwithstanding (1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the County Management Committee at any time for the transaction of the business of the County Management Committee.
 - (3) Unless three quarters of the total members of the County Management Committee otherwise agree, at least fourteen days' written notice of every meeting of the County Management Committee shall be given to every member of the County Management Committee.
 - (4) The quorum for the conduct of the business of the County Management Committee shall be five members.
 - (5) The Chairperson shall when present, preside at every meeting of the County Management Committee but the members present shall elect one member to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.
 - (6) Unless a unanimous decision is reached, a decision on any matter before the County Management Committee shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.
- (7) Subject to (4), no proceedings of the County Management Committee shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the County Management Committee may determine its own procedure and the procedure for any subcommittee of the County Management Committee and for the attendance of other persons at its meetings.

Committees of the County Management Committee.

4. (1) The County Management Committee may establish such sub committees as it may deem appropriate to perform such functions and responsibilities as it may deem fit.
(2) the County Management Committee may where it deems appropriate, invite any person to attend its deliberations or those of any of its sub committees.

Disclosure of interest.

5. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration.

(2) A disclosure of interest made under (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the County Management Committee who contravenes (1) shall cease to be a member of the County Management Committee upon direction of the Member of the County Executive Committee.

Common seal.

7. (1) The common seal of the County Management Committee shall be kept in such custody as the County Management Committee may direct and shall not be used except under the authority of the County Management Committee.

(2) The affixing of the common seal of the County Management Committee shall be authenticated by the signature of the Chairperson, the Fund Administrator and one member nominated by other members of the County Management Committee

(3) any document not required by law to be made under seal and all decisions of the County Management Committee may be authenticated by the signatures of the Chairperson, the Fund Administrator and the member nominated.

(4) The common seal of the County Management Committee when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary authorization by the County Management Committee shall be presumed to have been granted.

Schedule to apply toward Development

8. The provisions of this Schedule shall apply to the conduct of the business of the Ward Development Fund Committee but only where no specific provisions have been made in this Bill, and only in so far as they do not constitute a contradiction or negation of the provisions of the Bill.

SECOND SCHEDULE (s. 12(2))

PROJECT RE-ALLOCATION FORM

Ward No:Name Financial year
Project No.....
Project Title.....
Amount allocated (Kshs).....
Amount disbursed (Kshs).....
Balance (Kshs).....
Unspent to be reallocated.....
Signature Date
Name Position

**THIRD SCHEDULE (s. 21)
WARD PROJECTS SUBMISSION FORM**

Ward No. Ward Name Financial year

Chairperson Ward Development Fund Committee Signature
The Kakamega County Ward Development Fund Bill, 2017

Date
Serial.....
Name of Project.....
Amount allocated.....
Total for the Financial Year.....

**FOURTH SCHEDULE (s. 22)
PROJECT DESCRIPTION FORM**

Ward No: Ward Name County
 Project Number
 Project Title
 Sector
 Status of projects (tick one) New ... Extension ... On-going ...
 Rehabilitation
 Brief statement on project status at time of submission

 Financial year 1st July To 30th June.....
 Original Cost estimates, in Ksh. dated.....
 Amount allocated last financial year
 Person completing form: Signature
 Name Position
 Date

MEMORANDUM OF OBJECTS AND REASONS

The main object of this BILL is to establish the Wards Development Fund into which an amount not less than twenty percent of the total County Government annual development budget shall be paid into so as to facilitate development at the Ward Level by ensuring that a specific portion of the county development budget is devoted to development of wards and in particular the fight against poverty at the Ward level.

Part I of the BILL sets out the preliminary matters including the commencement date and the definition of various terms used in the BILL.

Part II of the BILL establishes the Ward Development Fund to be administered by the Fund Administrator.

Part III of the BILL outlines the financial procedures with respect to the administration and use of the Fund. This Part provides for the allocation and disbursement of funds from the Fund and requires the County Government and the Ward Development Fund Committee to open separate bank accounts with respect to the monies from the Fund

Part IV of the BILL provides for the submission of ward project proposals by elected member of the County Assembly. The Part outlines the format for presentation of projects to be undertaken under the fund and also provides the manner of sharing of the monies from the Fund which shall be based at an equal eighty percent equality and subsequent twenty percent based on population of each ward.

Part V of the BILL provides for the type of projects that may be included for funding under this BILL. In particular, this Part provides that such projects must be development based. This Part also sets out a minimum number of projects to be funded so as to ensure distribution of projects within the Ward. The eligibility of some projects for funding such as part funding is also addressed in this Part.

Part VI of the BILL provides for the establishment of Ward Development Fund Committee. This part sets out the composition, functions of the committee and maximum allocation and restrictions. The Part also provides for the establishment of a County Assembly Select Committee by the County Assembly known as the Ward Fund Committee with definite functions particularly to ensure implementation of the Bill.

Part VII of the BILL provides for the procedure to be followed in the implementation of the Ward based projects. It is proposed in the BILL that the County Management Committee and the Ward Development Committee ensures implementation of the projects in the ward.

Part VIII of the BILL provides for miscellaneous clauses to ensure proper utilization of funds, it creates offences and penalties against any person who misappropriates funds meant for development projects under the BILL. The Bill also empowers the member of the County Executive Committee to handle all complaints and disputes arising from the administration of the fund and submit a report on the status of the same to the County Assembly for deliberation.

Dated this Day of 2018

Hon. LYSTON S. AMBUNDO

Chairman, Ward Fund Committee

Date: 4/16/2018

From: Joseph Mungai Ngugi

To: Clerk of the Senate

Subject: Oral Memoranda on THE COUNTY WARDS DEVELOPMENT EQUALISATION FUND BILL, 2018

① J Com
Kindly bring to the attention of the committee.



EJ
17/04/18

Clare Assistant Finance Committee

Please deal
17/4/18

First, I would like to acknowledge the significance of THE COUNTY WARDS DEVELOPMENT EQUALISATION FUND BILL, 2018-a bill sponsored by Murang'a senator, Irungu Kangata.

In support of the bill, THE COUNTY WARDS DEVELOPMENT EQUALISATION FUND BILL, 2018 if passed by the senate will establish not only an impartial development process but also decentralised development throughout the country. Besides, beyond establishment of the fund bill, the bill has established strong administrative structures that will oversee the management of the funds. This has been provided in PART 3 of the bill subsections 14, 15, 16, 17, 19, 19 and 20 that highlights the processes of establishment, functions, removal and set conducts of the selected committee

Second, the Kangata's proposed law provides a mechanism through which wards projects will be identified and prioritized through participation of the public through county ward's public participation.

Third, if the bill sails through the second reading, the, the county wards will receive equal distribution of resources.



Fourth, The MCAs will attain their functional independence especially in executing their oversight roles on the county leadership deprived of the distress and fear of victimization in their particular wards. Therefore, for those MCA's who contrasts with their governors and particular policies sponsored by their governors, then, they will notwithstanding develop their electoral areas without begging their county governments for help. For example, in Meru, MCAs from Mbeere South and North Sub Counties accused Governor Martin Wambora of discriminating their regions initiating development projects.

Such projects include development of nursery schools, rural roads, water projects, bridges, installation of street lighting among others.

The MCA's like other elective posts are very close to their electorates who pursue them with Immeasurable demands on development of their wards.

However, despite the indispensable significance posed by this bill, the allocation of funds to the elective areas targeted by the bill should be based on the population statistics rather than the geographical areas. We have county wards that have extensive geographical areas but the populace within that context is small, it would thus be unfair and unequitable allocating the same amount of funds with a small electorate area but densely populated. Let's therefore consider the numbers within the wards as opposed to the geographical areas.

Zimbra

csenate@parliament.go.ke

Public participation on county ward development and equalization fund



From : Kirigwi Charles <cmkirigwi@gmail.com>

Tue, 17 Apr, 2018 11:21

Subject : Public participation on county ward development and equalization fund

1 attachment

To : csenate@parliament.go.ke

Morning

I want to thank the sponsor of the bill and herein are my proposal to the bill.

God willing i will appear in person tommorrow for a brief presentation.

This is the way to touch lives at the grassroot level.

regards

Hon Charles Kirigwi.

PUBLIC PARTICIPATION ON COUNTY WARD DEVELOPMENT FUND BY THE SENATE ASSEMBLY.docx
22 KB



① DCom

Kindly bring to the attention of the Committee.

EP 17/04/18

② Clerk Assistant Finance Committee

please deal

17/4/18

PUBLIC PARTICIPATION ON COUNTY WARD DEVELOPMENT EQUALISATION FUND BILL, 2018. BY THE SENATE ASSEMBLY.

NO	SECTION	CURRENT BILL	PROPOSED AMMENDMENTS	REMARKS
1	12(2)	The Auditor-General shall submit a report under subsection(1)to the Senate for consideration.	The Auditor-General shall submit a report under subsection(1)to the County Assembly and the Senate for consideration.	Its prudent for county assemblies to be aware of the auditors findings first hand rather than being pedestrian on the auditors findings.
2	13(1)	For the purpose of disbursement of the funds under this Act there shall be opened and maintained by each ward; a ward account in any commercial bank approved by the County Treasury into which all funds allocated to the ward shall be kept and as such an account shall be known by the name of the ward for which it is opened.	For the purpose of disbursement of the funds under this Act there shall be opened and maintained by each county; a County Ward Development Account in any commercial bank approved by the County Treasury into which all funds allocated to the County wards shall be kept and as such an account shall be known by the name of the county ward development fund for which it is opened.	This will ease the audit of the fund and will bring better accountability as the County Fund manager will be solely accountable.And will also observe the separation of powers.
3	13(2)	Each ward shall maintain only one account with respect to disbursements of the funds received pursuant to this Act.	The County Fund Manager shall maintain only one account in his books for every ward in the county with respect to disbursements of the funds received pursuant to this Act.	This will save taxpayers money in terms of bank charges and accountability. It will centralize all the projects from the ward commitees in terms of fund disbursements.
4	13(1) – (10)	All the clauses mentioned therein	Align them on the understanding that we will only have one county office dealing with issues of fund disbursements and implementation.	Will create order and enforcement of this act with clear line of direction.
5	17(2)	The members of the board shall elect the chairperson of the board from amongst the three persons appointed in accordance with subsection 1(c)	The Governor shall appoint the chairperson of the board from amongst the three persons appointed in accordance with subsection 1(c)	Separation of powers and the Governor being the county head need to have control of the board and the fund.
	21	new	PROVIDE FOR SUB HEADING –COUNTY	

			FUND MANAGER OFFICE	
6	21	There shall be a fund manager who shall be competitively recruited by the county public board and approved by the respective county assembly	There shall be a County fund manager and county project coordinator who shall be competitively recruited by the county public board and approved by the respective county assembly. The county project coordinator shall deputize the county fund manager and shall be the equivalent employment rank with county chief officer.	Clear organograph
6	25(1)	For the purpose of the project implementation there shall be opened and maintained by the comitee a project account for every approved project in any commercial bank approved by the county treasury into which all approved project funds shall be kept and such an account shall be known by the name of the project for which it is opened.	For the purpose of the project implementation there shall be opened and maintained by the board a County ward development fund account for the ward projects in any commercial bank approved by the county treasury into which all approved project funds shall be drawn indicating each and every ward project unique reference number on the account.	If the bill is passé din its current form it will be hectic with a lot of haphazard transactions that can lead to abuse with no person to take blame.
	25(2)	The signatories to an account under subsection(1)shall the project coordinator and three members of the comitee nominated by the comitee.	The signatories to an account under subsection(1)shall be the County Fund manager, and any other two signatory directed by the board.	The county fund manager shall be accountable and answerable.
	25(3)	The signing instructions shall be such that the signature of the project coordinator shall be mandatory on all payment cheques or instruments intended for the release of money from the project account and at least two of the other three signatories.	The signing instructions shall be such that the signature of the county fund manager shall be mandatory on all payment cheques or instruments intended for the release of money from the county ward development fund account and at least two of the other three signatories as directed by the board.	Merge 25(3) and (2)
	25(4)-(9)	Delete project account, Delete committee	1.Insert county ward development fund account and/ or ward book account	alignment

			maintained by the county fund manager. 2.insert the board to replace the committee.	
	26(1)	Any funding under this act shall be for a complete project or a defined phase of a project and may include the acquisition of land.	Any funding under this act shall be for a complete project or a defined phase of a project and may include the acquisition of motor vehicles, machineries and land.	Widening the scope
6	PART V	THE PROJECT PROPOSAL AND IMPLEMENTATION COMMITTEE	THE WARD PROPOSAL COMMITTEE	The implementor of all county projects is the county government through the governor.
6a	28 (14)	The committee shall meet at least six times in a year but it shall not hold more than thirty six meetings in the same financial year,including sub comitee meetings.	The committee shall meet at least six times in a year but it shall not hold more than twelve meetings in the same financial year,including sub comitee meetings.	There should be order and it will chaotic for the county fund manager to act on the so many ward meetings resolutions. Infact once the projects are identified by the community through public participation then there should be time to implement them. Nb Government disbursement to counties is monthly not lumpsum.
7	28(15)	new	The board shall determine the remuneration of the ward committes.	From the 1 % allocation of the budget they will apportion,budget and regulate ward meetings.
	32(1)-(4)	Cut the whole section and paste in section 21 of this act and renumber the act.	Move to subsection 21 with the necessary amendments so as the act can flow well.	alignment
8	38(4)	The board shall submit all the forms received under this section and complying with this act to the county assembly for approval.	The board shall submit quarterly summary of the projects from the wards received and progress reports under this section and complying with this act to the county assembly for noting,adoption and /or approval.	The county fund manager should compile summary to the assembly otherwise the office may seem to be not competent.
9	43	The comitee shall compile and	The board shall compile and maintain	Alignment

		maintain record showing all receipts, disbursements and actual expenditures on a monthly basis, in respect of every project under this act.	record showing all receipts, disbursements and actual expenditures on a monthly basis, in respect of every ward project in the county under this act.	
10	46(5)	new	(f) consider and report to the county assembly matters relating to section 31 of this act.	Emphasis
	46(5)a	Oversee the implementation of this act and in this respect, shall after two years, submit a report to the county assembly and where necessary, purpose any amendments to this act, in particular with respect to the quantum of funds repayable into the fund in accordance with section 5 of this act	Oversee the implementation of this act and in this respect, shall after two years, submit a report to the county assembly and where necessary, purpose any amendments to this act, including the quantum of funds into the fund in accordance with section 5 of this act.	Meaning of repayable and the county assembly may propose many amendments so as to customize the act.
11	52(3)1	The committee may make regulations prescribing-	The board may make regulations prescribing-	It is too technical to be handled by the ward committees furthermore the implementor is the best placed person to propose further regulations to the act.
12	Part 1	definition	Define committee, Bank account of the fund, County fund manager, as proposed.	

Proposed by

Hon Charles Mwangi Kirigwi

0721920850

REPUBLIC OF KENYA



**UASIN GISHU COUNTY ASSEMBLY
P. O. BOX 100-30100 ELDORET**

OUR REF: UG/CA/B1/BGET/VOL 4/6

DATE: 18th April, 2018.

The Clerk,
The Senate/Secretary, Parliamentary Service Commission,
P.O Box 41842-00100,
NAIROBI

Dear Sir,

**RE: COUNTY WARDS DEVELOPMENT EQUALISATION FUND
BILL, 2018 (SENATE BILLS No. 5 OF 2018.)**

The above Subject matter refers;

Reference is made to your advert on the local dailies on Public hearings/receipt of memoranda on the above mentioned bill.

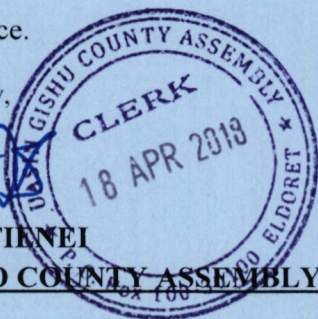
The Committee on Budget and Appropriation in a series of its sittings went through the County Wards Development Equalisation Fund Bill, 2018 (Senate Bills No. 5 of 2018) and came up with proposals for your considerations.

The purpose of this letter is to forward the memorandum on behalf of Uasin Gishu County Assembly Budget and Appropriation Committee as attached.

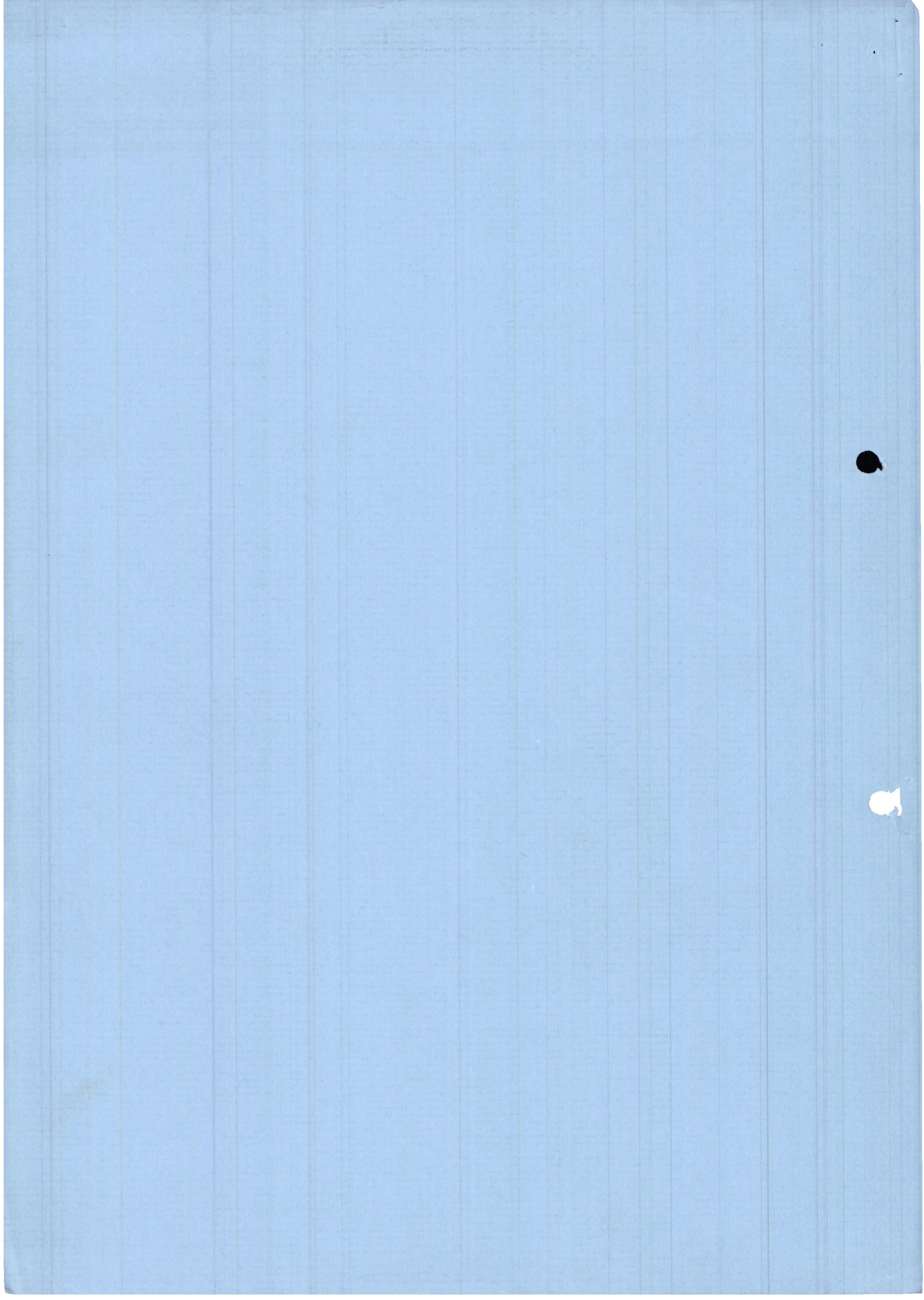
Thanks in advance.

Yours Faithfully,

HARON K. SITIENEI
Ag; CLERK TO COUNTY ASSEMBLY
CC



Hon. Speaker
Chairperson- Budget and Appropriation Committee



REPUBLIC OF KENYA



COUNTY ASSEMBLY OF UASIN GISHU

MEMORANDUM

To: The Clerk of the Senate

From: Committee of Budget and Appropriation-Uasin Gishu County Assembly

Date: 17th April, 2018

Subject: County Wards Development Equalisation Fund Bill, 2018 (Senate Bills No. 5 of 2018)

Article 174 of the constitution set out the objectives of devolution among them being-

- (a) To give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the state and in making decisions affecting them;
- (b) To recognize the right of communities to manage their own affairs and to further their development;
- (c) To promote social and economic development and the provision of proximate, easily accessible services throughout Kenya by decentralizing the provision of services pursuant to Article 176(2) of the constitution; and
- (d) To ensure equitable sharing of national and local resources throughout Kenya.
- (e) To protect and promote the interest and rights of minorities and marginalized communities; and
- (f) To facilitate and decentralization of state organs, their functions and services, from the capital of Kenya.

Article 96(1) provides that the senate represents the Counties, and serves to protect the interests of the Counties and their Governments.

(2) The Senate participates in the law- making function of parliament by considering, debating and approving bills concerning Counties, as provided in Articles 109 to 113.

(3) The Senate determines the allocation of national revenue among Counties, as provided in Article 217, and exercise oversight over national revenue allocated to County Governments.



states that every County Government shall decentralize its functions and the provisions of its services to the extent that it is efficient and practicable to do so.

The Committee concerns are;

- (i) Section 5 2(a) that reads “*at least eight percent of the share of revenue allocated to the respective county government for the respective year*” is not sufficient; The committee recommends that Section 5 2(a) that reads “*at least eight percent of the share of revenue allocated to the respective county government for the respective year*” to read “*at least Fifteen percent of the share of revenue allocated to the respective county government for the respective year*”; following the precedence set under Article 203 (2) which states that for every financial year, the equitable share of the revenue raised nationally that is allocated to County Governments shall be not less than Fifteen per-cent (15%) of all the revenue collected by the national government.
- (ii) Section 28 (2) of the proposed County Wards Development Equalization Fund Bill, 2018 on the composition of the project proposal and implementation committee, the ward office is not represented. The Committee recommends introduction of Section 28 (1f) to read “*two persons from each gender nominated by County Assembly Service Board*”.
- (iii) Considering the above proposal, Section 28(10) which reads “*the quorum of the project proposal and Implementation committee shall be three*” is hereby proposed to read “*the quorum of the project proposal and Implementation committee shall be one half of members*”

The committee hereby urges The Senate to consider addressing the above raised concerns.

SIGN:



DATE:

16/04/18.

HON. JONATHAN NGETICH
CHAIR COMMITTEE OF BUDGET AND APPROPRIATION

CC:

1. Hon. Speaker- Uasin Gishu County Assembly
2. Clerk to County Assembly

