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**THE COUNTY WARDS (EQUITABLE
DEVELOPMENT) BILL, 2018**

A Bill for

AN ACT of Parliament to provide a framework for the promotion of equitable growth in the wards within the counties by providing for the allocation of funds for ward-based development projects; to provide mechanisms for selection of projects; to provide an oversight mechanism for the utilization of funds allocated for ward-based development projects; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

PART I—PRELIMINARY

1. This Act may be cited as the County Wards (Equitable Development) Act, 2018.

Short title.

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

Interpretation.

“Commission” means the Commission on Revenue Allocation established under Article 215 (1) of the Constitution;

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

“county executive committee member” means the county executive committee member responsible for matters related to finance in the respective county;

“relevant committee” means the county assembly committee responsible for matters related to finance and budget in the respective county assembly;

“revenue” has the meaning assigned to it under the Commission on Revenue Allocation Act; and

No. 16 of 2011.

“ward” means one of the wards into which Kenya is divided under Article 89 of the Constitution.

3. The objects and purposes of this Act are to—

Objects and purposes of the Act.

- (a) promote the objects of devolution set out under Article 174 of the Constitution by providing a legal framework that promotes equitable development across all wards in each county;

- (b) provide a framework for the participation of the residents of each county in the identification of priority projects in county in respect of which funds are allocated under this Act;
- (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; and
- (d) to ensure equitable sharing of resources within the county.

4. All persons and entities under this Act shall, in the performance of their functions under this Act, be guided by the following principles—

Guiding principles.

- (a) the promotion of the social and economic development of all persons residing within the ward in order to ensure the realisation of their economic and social rights under Article 43 of the Constitution;
- (b) the principles and objects of devolution set out under Articles 174 and 175 of the Constitution;
- (c) equity and the need to ensure that persons residing in marginalised areas in the wards access facilities and services that are available to other residents in the respective county; and
- (d) the promotion of the national values and principles of governance set out under Article 10 of the Constitution.

PART II—IDENTIFICATION OF WARD-BASED PROJECTS FOR EQUITABLE DEVELOPMENT WITHIN COUNTIES

5. (1) A county government shall allocate its resources equitably across all the wards in the county.

County governments to ensure equitable development.

(2) For purposes of subsection (1) the county executive committee shall—

- (a) within the medium term, ensure that development projects are spread out equitably across all the wards in the county; and
- (b) on the advice of the Commission determine the criteria for allocation of a specific amount for ward

development projects identified in accordance with this Act.

(3) In determining the criteria for allocation under subsection (2) (b), the county executive committee shall ensure that the allocation—

- (a) is not less than fifteen percent of the county government's allocation for development expenditure as provided under section 107 (2) (b) of the Public Finance Management Act; and
- (b) is complimentary to any other development efforts by the county government or any other agency.

No. 18 of 2012.

(4) Nothing in this Act shall be construed to mean that an area may be excluded from any other development programmes.

(5) County government development allocations shall continue alongside the projects funded under this Act.

6. (1) The criteria under section 5 (2) (b) shall—

County assembly approval of criteria.

- (a) be submitted by the county executive committee member to the respective county assembly for approval; and
- (b) apply for such period as shall be determined by the county assembly.

(2) The county assembly shall approve or reject the criteria within fourteen days of receipt of the criteria.

(3) If the county assembly fails to approve or reject the criteria within the period specified under subsection (2), the criteria shall be deemed to have been approved and shall be applicable for a period of three years.

7. (1) The residents of each county shall identify development projects for implementation in the respective county in accordance with this Part.

Identification of projects.

(2) The county executive committee member shall coordinate the process of identifying projects for implementation under this Act in the respective wards and shall, for this purpose ensure public participation.

(3) The county executive committee member shall, for the purpose of subsection (2), collaborate with the respective village councils established in the county under section 53 of the County Governments Act

No. 17 of 2012.

(4) The county executive committee member shall designate county public service officers to offer technical assistance the village councils during the project identification processes.

8. (1) The county executive committee member shall consolidate and submit the proposals received under section 7 (4) to the county executive committee for prioritization and determination of projects for implementation in each ward.

Selection of projects by the county executive committee.

(2) In determining the projects for implementation under subsection (1), the county executive committee shall prioritize the wards determined by the Commission to be marginalised or requiring special or urgent intervention in order to bring the standards of living of the residents residing in the specific wards to the same level as those generally enjoyed by the residents of other wards in the county.

(3) The county executive committee member shall publicize the decision of the county executive committee by notice in the county *Gazette* and through such other media as the county executive committee member shall consider appropriate.

(4) The county executive committee member shall align the project identification and selection processes with the county budget cycle as set out in the Public Finance Management Act.

No. 18 of 2012.

9. A project meets the criteria for funding under this Act if the project —

Criteria for selection of projects.

(a) is a community based project which aims at—

- (i) ensuring the development of infrastructure that would promote the delivery of basic services and goods to persons residing at the lowest unit of decentralization established pursuant to section 54 of the County Governments Act;
- (ii) enhancing the standards of living of persons residing within the respective ward through the delivery of basic goods and services;
- (iii) promoting access to facilities that are key in the delivery of services to residents in the respective wards; or

No. 17 of 2012

- (iv) promoting the economic development of residents within the respective ward through activities that promote the development of talent, growth of micro and small enterprises and access to markets;
- (b) falls within the scope of functions of county governments as set out under Part 2 of the Fourth Schedule to the Constitution;
- (c) does not duplicate any other project being undertaken under the national or county government;
- (d) is of such nature as to ensure that the prospective benefits arising out of the project are available to a cross-section of the residents of a particular area; and
- (e) meets such other criteria as a county government may, in county legislation, prescribe.

10. The projects identified under section 7 shall be included in—

- (a) the development plan provided for under section 126 of the Public Finance Management Act;
- (b) the County Fiscal Strategy Paper provided for under section 117 of the Public Finance Management Act;
- (c) the county budget estimates provided for under section 13 of the Public Finance Management Act; and
- (d) any other plan or document provided for under law, which may be determined by the Commission as being necessary for the implementation of this Act.

Integration of projects in county planning.

No.18 of 2012.

PART III — IMPLEMENTATION OF PROJECTS

11. For the purposes of this Act, the county executive committee member shall —

- (a) ensure timely and efficient disbursement of funds for the implementation of county ward development projects;
- (b) ensure efficient management of the funds in the implementation of county ward development projects;

Functions of the county executive committee member.

- (c) co-ordinate the implementation of projects at inter-ward level;
- (d) receive and address complaints that may arise from the implementation of this Act;
- (e) keep an inventory of all projects undertaken by the county government under this Act;
- (f) encourage best practices in the implementation of projects; and
- (g) perform such other duties as may be necessary for the proper implementation of this Act.

12. (1) Funds allocated for a project shall only be re-allocated for any other purpose during the financial year with the approval of the county assembly.

Funds allocated to ward development projects.

(2) If for any reason a project is cancelled or discontinued during the financial year, funds allocated for such a project shall be reallocated to another project to be implemented in the same ward.

(3) Where —

- (a) a project is to be carried out for a period of more than one financial year; and
- (b) the financial obligations relating to the project exist for the subsequent year,

the county executive committee member shall seek the approval of the county assembly for the appropriation of monies in the subsequent financial year during which the project is to be undertaken for the completion of that project.

(4) The allocation of additional funds to a ward with respect to a project that received funds during the previous financial year shall have priority over a new project where—

- (a) there is in place an existing contract for the implementation of the project in the current financial year including the potential of significant penalties for the cancellation or delay in implementation of the contract;
- (b) there is in place, a cost sharing agreement with the national government or other entity that

contributes at least forty nine percent of the total cost of the project;

- (c) it is determined that the monies allocated for the carrying out of the project are not adequate; and
- (d) there is demonstrable actual work in progress in relation to the project.

(5) The county executive committee member and the county assembly shall not approve the reallocation or appropriation of funds under subsections (2) or (3) unless

- (a) a contract or financial commitment exists in relation to the project;
- (b) the completion time for the project does not extend to a period of more than two years; and
- (c) substantial work has commenced on the project and it cannot be completed within a period of one year.

(6) A project shall not include an activity that involves a personal award in cash or in kind to any person.

(7) 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 account or funds which are not utilized for whatever reasons.

PART IV—REPORTING AND OVERSIGHT

13. (1) A county budget or county plan under the County Governments Act or the Public Finance Management Act dealing with allocation of resources shall clearly indicate the manner in which the resources have been equitably distributed across the wards in the county.

County assembly
approvals.
No. 17 of 2012.
No. 18 of 2012.

(2) A county assembly—

- (a) shall not approve a county plan or budget that does not comply with subsection (1); and
- (b) may amend a county plan or the development expenditure in a county budget in order to ensure the equitable allocation of resources across the wards of the respective county.

14. A county executive committee member shall maintain comprehensive and accurate records including a system of internal accounts with respect to the projects, the

Maintenance of
records.

process of accountability and the conduct of audits in relation to the funds allocated under this Act.

15. (1) A county executive committee member shall submit quarterly reports to the county assembly on setting out information on—

Report to county assembly.

- (a) the projects under implementation and the status of the implementation of such projects;
- (b) monies expended with respect to each project;
- (c) the management of the finances allocated with respect to a project including the receipt and disbursement of funds and the accountability of funds received pursuant to this Act;
- (d) mechanisms for the monitoring and evaluation of projects implemented under this Act;
- (e) services and works procured in relation to each project;
- (f) the schedule of the works required to be undertaken and status of the implementation of each project;
- (g) the timelines for completion of specific phases of the project including any delays in the completion of specific delays and the reasons for the delays;
- (h) compliance with principles of sound management systems;
- (i) compliance with the standards for service delivery, prescribed in this Act or any other law;
- (j) the manner in which the funds have been utilized in relation to the project;
- (k) the monies disbursed and any unutilized balance;
- (l) steps taken towards operationalization of all the projects;
- (m) activities undertaken to ensure the maintenance and continuity of projects;
- (n) any recommendations with respect to the criteria for apportionment of projects; and
- (o) such other information as the county executive committee member may consider necessary.

(2) It shall be gross misconduct for a county executive committee member to fail to report to the county assembly

committee on the matters provided for under subsection (1).

16. (1) The relevant committee of a county assembly shall—

Funding of projects.

- (a) scrutinize the county budget and the county plans referred to under this Act, the County Governments Act, the Public Finance Management Act to ensure compliance with this Act and the integration of the principle of equitable development in the budget and the plans;
- (b) scrutinize the reports of the county executive committee member and make appropriate recommendations to the county assembly;
- (c) upon petition by a member of the public or on its own initiative, conduct inquiries on any project that the committee suspects impropriety;
- (d) oversee the implementation of the policy framework and legislative matters that may arise in relation to this Act;
- (e) engage the Commission on Revenue Allocation, the county executive committee member and any other relevant stakeholder so as to jointly deliberate and provide solutions to issues relating to achieving equitable development within the county; and
- (f) undertake any other function as may be assigned by the county assembly.

No.17 of 2012.

No.18 of 2012.

PART V—MISCELLANEOUS PROVISIONS

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

Offences and penalties.

18. (1) The respective county government may enact legislation—

County legislation.

- (a) making further provision for the criteria for the allocation of funds to a ward under this Act;

- (b) setting the timelines for the activities to be undertaken under this Act;
- (c) setting the parameters for project identification;
- (d) outlining the format of preparation and submission of the list of, and the description of, projects proposed by the entity for funding pursuant to this Act;
- (e) determining the minimum and maximum number of projects that may be undertaken in a ward to ensure efficiency and effectiveness in utilization of funds under this Act;
- (f) outlining the process of receipt, consideration and approval of projects for implementation under this Act;
- (g) outlining the procedure for consolidation of projects which are of the same nature and which would bring greater benefit to the residents of the county if implemented as one project;
- (h) specifying the process of engagement with the residents of the respective wards under this Act; and
- (i) any other matter not provided for under this Act.

19. Section 108 (2) (a) of the County Governments Act is amended by inserting the following new sub-paragraph immediately after sub-paragraph (ii)—

- (ii) the implementation of the County Wards (Equitable Development) Act;

Amendment to
No. 17 of 2012.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Bill principally seeks to promote the decentralization of development within the counties by creating a framework for 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.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms

Statement of how the Bill concerns County Governments

The Bill seeks to provide a framework for the identification of development projects in wards within counties and the modalities for the allocation of resources for these projects. The Bill requires, *inter alia*, that such projects shall be within the functions of county governments as set out under Part 2 of the Fourth Schedule to the Constitution.

The Bill is therefore one that concerns county governments in terms of Article 110 (1) (a) of the Constitution as its provisions affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

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

Dated the 2nd November, 2018.

MOHAMED M. MOHAMUD,
Chairperson, Committee on Finance and Budget.

Section 108 of No. 18 of 2012 of which it is proposed to amend

108. County government deviation from financial objectives.

(1) A county government may, with the approval of its county assembly, deviate from the financial objectives in the relevant County Fiscal Strategy Paper, but only on a temporary basis and only if the deviation is required because of a major natural disaster or some other significant unforeseen event.

(2) If there is a change of county government, the new county government may deviate from the financial objectives in a County Fiscal Strategy Paper, but may not deviate from the fiscal responsibility objectives.

(3) The County Treasury shall also provide a report to the county assembly regarding the deviation and its implication and shall include in the report —

- (a) information on the reasons and implication for the deviation;
- (b) proposals to address the deviation;
- (c) the time the deviation is estimated to last; and
- (d) the status of development projects initiated by the county government and if any projects have been stopped, the reasons for doing so.

(4) The County Treasury shall publish and publicise the report not later than fifteen days after it has been submitted to the county assembly.