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Paper laid by
the Hon. Wafiq Nanyingi
Chans,
MS
12/8/2020

REPUBLIC OF KENYA



NATIONAL ASSEMBLY
PAPERS LAID

DATE: 12 AUG 2020 DAY

THE NATIONAL ASSEMBLY

TABLED
BY:

TWELFTH PARLIAMENT
CLERK AT PARLIAMENT

**COMMITTEE ON NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT
FUND**

**REPORT ON THE COUNTY WARDS (EQUITABLE DEVELOPMENT) BILL,
(SENATE BILL NO.34 OF 2018)**

**CLERK CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES,
PARLIAMENT OF KENYA,
NAIROBI**

AUGUST, 2020

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CHAIRPERSON'S FOREWORD

The Senate Bill No. 34 of 2018 was published in the Kenya Gazette Supplement Number 138 of 8th November, 2018 and subsequently tabled in the House for First Reading on 6th December, 2018 and thereafter committed to the Senate Standing Committee on Finance and Budget for consideration pursuant to Standing Order 140(1) of the Senate Standing Orders. The Bill was passed by the Senate with amendments on 19th June, 2019 and later forwarded to the National Assembly for concurrence.

Pursuant to the provisions of the National Assembly Standing Order 143 (3) the Bill went through the First Reading as stipulated in the Standing Orders of the National Assembly, on Tuesday 8th October, 2019 and was committed to the Select Committee on National Government Constituencies Development Fund for consideration and reporting to the House.

The Bill seeks to promote further decentralization of development by creating a framework for identifying projects that are beneficial to locals at the ward level. It also has modalities of resource allocation to the projects, implementation and oversight of the identified projects.

The Committee considered the Bill and resolved to subject it to public participation pursuant to the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127(3). The Committee invited submissions from members of the public via advertisements in the daily newspapers on 17th October, 2019 and submission was only made by the National Governments Constituencies Development Fund. While International Budget Partnership-Kenya, Commission of Revenue Allocation, Controller of Budget, Uasin-Gishu County Assembly, Mr Dominic Mboya- Youth Representative-Homa- Bay County, Institute of Certified Public Accounts of Kenya (ICPAK), County Assemblies Forum, National Treasury and Planning, and Council of Governors' had made their submission to the Senate Committee.

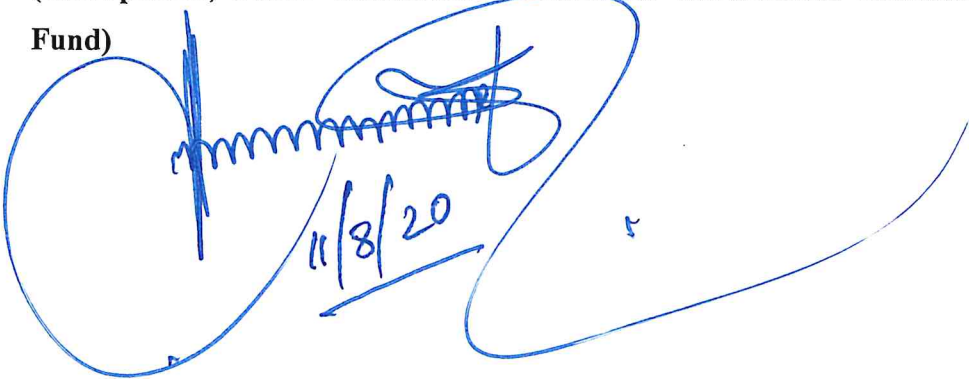
From its observations arising from the submissions made, the Committee recommends that **the County Wards (Equitable Development) Bill, 2018 should not be proceeded with as it is unnecessary since there are adequate existing laws on fiscal decentralization. The subsisting law has a clear and elaborate framework of Financing County Governments, budget execution, monitoring and oversight. There is no legal gap that the bill is addressing outside the existing legal and regulatory framework.**

It is now my pleasant duty and privilege, on behalf of the National Assembly Select Committee on National Government Constituencies Development to thank the office of the Speaker and Clerk

of the National Assembly for the support extended to the Committee. It is therefore my pleasure to table this Report of the Committee on the County Wards (Equitable Development) Bill, 2018.

Hon. Wafula Wamunyinyi M.P.

(Chairperson, Select Committee on National Government Constituencies Development Fund)



11/8/20

1.0 PREFACE

Establishment and mandate of the committee

1. The Select Committee on National Government Constituencies Development Fund is a statutory committee established in accordance with the provisions of section 50 of the NG-CDF Act of 2015 and its functions include:

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

1.2 COMMITTEE MEMBERSHIP

2. The Committee membership comprises -

Hon. Wafula Wamunyinyi, MP **Chairperson**
Member of Parliament for Kanduyi
Ford Kenya

Hon. Omar Mohamed Maalim, MP **Vice-Chairperson**
Member of Parliament for Mandera East Constituency
Economic Freedom Party

Members

Hon. Fred Kapondi Chesebe ,MP
Member of Parliament for Mt. Elgon
Constituency
Jubilee Party

Hon. Cornelly Serem, MP
Member of Parliament for Aldai
Constituency
Jubilee Party

Hon. Sophia Abdi Noor, MP
Member of Parliament for Ijara Constituency
Hon. Moses Lessonet, MP
Member of Parliament for Eldama Ravine
Constituency
Jubilee Party

Hon. Joseph Oyula, MP
Member of Parliament for Butula
Constituency
ODM Party

Hon Josphat G.Kabeabea, MP
Member of Parliament for Ndia Constituency
Jubilee Party

Hon. Titus Khamala, MP
Member of Parliament for Lurambi
Constituency
Amani National Congress

Hon. Richard Tongi, MP
Member of Parliament for Nyaribari Chache
Constituency
Jubilee Party

Hon. Sharif Athman Ali, MP
Member of Parliament for Lamu East
Constituency

Jubilee Party

Hon. Onesmus Kimani Ngunjiri, MP
Member of Parliament for Bahati MP
Jubilee Party

Hon. Benjamin Gathiru Mwangi, MP
Member of Parliament for Embakasi Central
Constituency
Jubilee Party

Hon. Ferdinard Wanyonyi, MP
Member of Parliament for Kwanza
Constituency
Ford Kenya

Hon. Janet Jepkemboi Sitienei, MP
Member of Parliament for Turbo
Constituency
Independent Member

Hon. Kasim Tandaza Sawa, MP
Member of Parliament for Matuga
Constituency
Amani National Congress

Hon. Fred Ouda ,MP
Member of Parliament for Kisumu Central
Constituency
Orange Democratic Movement

Hon Joshua Mwalyo, MP
Member of Parliament for Masinga
Constituency
Wiper Party

Hon. Lodepe Nakara, MP
Member of Parliament for Turkana Central
Constituency
ODM Party

1.3 COMMITTEE SECRETARIAT

3. The Committee is facilitated by the following staff: -

Mr. Johnston Kioko Lead Clerk
Second Clerk Assistant

Ms. Naserian Lotuai
Third Clerk Assistant

Mr. Ahmed Hassan Odhwa
Principal Research Officer

Ms. Brigita Matti
Legal Counsel

Ms. Farida Ngasura
Audio Recording Officer

Ms. Esther Ngechu
Sergeant At Arms

2.0 INTRODUCTION

4. The Senate Bill No. 34 of 2018 was published in the Kenya Gazette Supplement Number 138 of 8th November, 2018 and subsequently tabled in the House for First Reading on 6th December, 2018 and thereafter committed to the Senate Standing Committee on Finance and Budget for consideration pursuant to Standing Order 140(1) of the Senate Standing Orders.
5. On Tuesday, 14th March, 2019 the Senate Standing Committee on Finance and Budget held a public participation session with members of the public and Stakeholders who included; International Budget Partnership-Kenya, Commission on Revenue Allocation, Controller of Budget, Uasin-Gishu County Assembly Committee on Budget and Appropriations, Mr. Dominic Mboya – Youth Representative from Homa-Bay County, Institute of Certified Public Accountants of Kenya –ICPAK, County Assemblies Forum, Council of Governors and the National Treasury and Planning.
6. The Bill was passed by the Senate with amendments on 19th June, 2019 and later forwarded to the National Assembly for concurrence.
7. Pursuant to the provisions of the National Assembly Standing Order 143 (3) the Bill went through the First Reading as stipulated in the National Assembly Standing Orders , on Tuesday 8th October, 2019 and was committed to the Select Committee on National Government Constituencies Development Fund for consideration and reporting to the House.

Article 118(1) (b) of the Constitution provides that, “Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”. The National Assembly Standing Order 127 requires the Committee to which a Bill is committed to facilitate public participation and take into account views and recommendations of the public when the Committee makes its report to the House. A newspaper advertisement (See appendix) on was placed on the newspaper inviting members to present their views to the clerk of the National Assembly, by the close of Thursday 17th October 2019. However by the close 5: 00 pm Thursday October 2020, only one stakeholder, the National Government Constituencies Development Board had submitted their memoranda.

8. The County Wards (Equitable Development) Bill, 2018 seeks to promote the objects of devolution as set out under Article 174 of the Constitution. The bill proposes a legal framework that promotes equitable development across all wards in each county.
9. The Bill provides 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.
10. 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.
11. Further, the bill provides a framework for the participation of the residents of each ward in the identification of priority projects in county in respect of which funds are allocated.
12. It promotes 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. It also ensures equitable sharing of resources within the county.
13. The principles of the Bill are:
 - a) the promotion of the social and economic development of all persons residing within the ward in order to ensure the realization 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 marginalized 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.

3.0 ANALYSIS OF THE BILL

Background

14. The Bill, Senate Bill No. 34 of 2018, was published in the Kenya Gazette Supplement Number 138 of 8th November, 2018 and passed by the Senate, with amendments, on 19th June 2019.

Purpose of the Bill

15. The Bill seeks 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 and to provide mechanisms for selection of projects. The Bill also seeks to provide an oversight mechanism for the utilization of funds allocated for ward-based development projects.

Overview of the Bill

16. The Bill aspires to 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.
17. Part II of the Bill provides for the identification of ward based projects for equitable development within the counties. Each county government is required to allocate its resources equitably across all the wards in the county, prioritizing the marginalized areas within the county.
18. The County Executive Committee (CEC) is to determine the criteria for allocation of resources, and in doing so ensure that the allocation 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.
19. The allocation criteria selected by the CEC must be presented to and approved by the County Assembly. The responsible CEC member is to ensure, and coordinate public participation of the residents of the county in identifying development projects for implementation in their respective ward. This is to be done in collaboration with the respective village councils and ward administrators.
20. The County Executive Committee member thereafter consolidates and submits the proposals received to the county executive committee for prioritization and determination of projects for implementation in each ward.

21. The CEC is to prioritize the wards determined by the Commission to be marginalized 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. The projects identified are then to be submitted to the respective county assembly for approval.
22. The decision of the county assembly as regards the projects approved for implementation in each ward is then to be publicized by notice in the county Gazette and through such other appropriate media.
23. Clause 10 of the Bill provides that the identified projects be included in:-
- a. development plan provided for under section 126 of the Public Finance Management Act;
 - b. County Fiscal Strategy Paper provided for under section 117 of the Public Finance Management Act;
 - c. county budget estimates provided for under section 13 of the Public Finance Management Act; and
 - d. any other plan or document prescribed by the Commission as being necessary
24. Part **III of the Bill** speaks to implementation of projects. Clause 11 provides for the functions of the CEC member in relation to implementation of projects, and disbursement and management of funds, which include ensuring timely and efficient disbursement of funds for the implementation of county ward development projects.
25. Clause 12 provides further guidelines regarding funds allocated to ward development projects. Funds allocated to a project shall only be re-allocated for any other purpose during the financial year with the approval of the county assembly and 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. Further, the allocation of additional funds to a project that received funds during the previous year shall have priority over a new project.
26. Part IV of the Bill provides for the oversight and reporting requirements. Clause 3 precludes a county assembly from approving a county plan or budget that does not clearly indicate the manner in which the resources have been equitably distributed across the wards in the county.
27. A CEC member is required to maintain accurate records with respect to the projects and submit to the county assembly quarterly reports which shall be scrutinized by the relevant committee of a county assembly.
28. Clause 17 of the Bill makes it an offence to misappropriate any funds or assets from the Fund.

29. Clause 18 specifies the matters on which County Governments may legislate on in relation to ward development projects.

4.0 PUBLIC PARTICIPATION - SUBMISSIONS FROM STAKEHOLDERS AND MEMBERS OF THE PUBLIC

30. Pursuant to Article 118 of the Constitution and Standing Order 127 (3) the committee invited memoranda from the public vide a notice in the local dailies.

One of the most important features of the Country constitutional framework is the requirement of public participation in governance and other administrative activities. Specifically, the provisions of the following articles are pertinent.

- i) Article 10 recognizes public participation as one of the national values;
- ii) Article 27 provides for equal treatment of all persons, while affirmative action in governance is provided for in Articles 54 and 56 of the Constitution;
- iii) Article 35 provides for the right of access to information held by the State or another person which is necessary for the exercise of any right or fundamental freedom;
- iv) Article 118 requires Parliament to conduct its business in an open manner and to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. It also prohibits Parliament from denying the public and media access into its sittings unless there are any justifiable reasons.

31. In line with the Articles of the Constitution, the Committee noted the submissions of the following stakeholders as submitted to the Senate: International Budget Partnership-Kenya, Commission on Revenue Allocation, Controller of Budget, Uasin-Gishu County Assembly Committee on Budget and Appropriations, Mr. Dominic Mboya – Youth Representative from Homa-Bay County, Institute of Certified Public Accountants of Kenya –ICPAK, County Assemblies Forum, National Government Constituencies Fund Board, Council of Governors and the National Treasury and Planning.

4.1 THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND BOAR

The Board made the following submissions that;

Background

32. The County governments are established under Article 176 of the Constitution, consisting of County Assembly and county executive. The functions and powers of the county are provided for under part 2 of the fourth schedule to the Constitution.

33. The Objects of devolution (Article 174 of the constitution) include the following:

- a. To give powers of self-governance to the people and enhance the participation of the people in exercise of the powers and 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 provision of proximate, easily accessible services throughout Kenya;
- d. To ensure equitable sharing of national and local resources throughout Kenya;
- e. To facilitate the decentralization of state organs, their functions and services, from the capital of Kenya; and
- f. To enhance checks and balances and separation of powers.

Purpose of the Bill

34. The Bill intends to provide a framework for the promotion of equitable growth in the wards within the counties by providing for 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.

Objects of the Bill

35. The Object of the Bill includes:

- i. To 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;
- ii. Provide framework for the participation of the residents in identification of priority projects;
- iii. Promote decentralization of functions and provision of services; and
- iv. Ensure equitable sharing of resources within county.

Part two of the Bill provides for identification of ward-based projects for equitable development and requires that:

36. The bill attempts to duplicate the County Government Act and Public Finance Management Act by re-legislating, which can be achieved via regulations. There are sufficient provisions in both Acts to deal with the issues that the Bill is purporting to address. For instance, the Objects of the Bill duplicates the provisions of Section 34 of the County Government Act while on the other hand, Section 126 of the Public Finance Management Act is succinct of County Planning and development.
37. The Bill purports to prescribe the working of the County executive, which is unnecessary, as sufficient provisions exist under the County Government Act.
38. The Proposed Act creates hurdles and bottlenecks (section 13, hence making the two Acts unimplementable in a seamless manner. The said section 13 purports to operationalize County Government Act and Public Finance Management Act (PFM), which is achievable through regulations. In any case, PFM Act is a national law, applicable across the Board and hence its purpose cannot be defeated by an inferior legislation. Worse, Section 13 of the Bill creates a dangerous ground for scuttling country's operation, where a county may refuse to approve county plan or budget (Section 13 of the Bill)
- 39.
40. The fact that the Bill requires that the county assembly approves projects (section 8(2) and receives reports on projects implementations (Section 15(1) create potential area of conflict between county executive and county assembly, hence hampering service delivery, thereby defeating the object of devolution as provided under Article 174 of the Constitution. Such would be unconstitutional on account of separation of powers, as Section 8(2) requires approval of development projects by county assembly, a reserve of county executive.
41. Section 16 of the Bill purports to direct on the manner in which county Assembly should work, which is provided under Chapter 11 of the Constitution and the County Government Act.

42. Section 18 is superfluous in that it purports to donate legislation powers to County Assembly, which power already exists under the Constitution (Article 185)

4.2 INTERNATIONAL BUDGET PARTNERSHIP-KENYA

43. Since the publication good improvements-by giving county governments to determine the criteria of such ward allocations. The Commission on Revenue Allocation play an advisory role to help counties come up with an equitable criterion for equitable distribution of resources. The unit of development used or implied in this Bill-Is it the ward or the village? Why organize all projects at the ward and village level? Since what we want is equitable development then the choice of level will have. In Sec. 5 (3) on the minimum allocation-it is not clear the basis of 15 per cent minimum.
44. While the ring-fencing will be done at the allocation stage, the actual expenditures vary and hence 15 per cent will be very different on the actuals. This means resources locked that cannot be used for other progressive purposes. How does this relate with the other existing ceilings such as minimum 30 per cent to development and not more than 35 per cent of recurrent to wages? Sec.7 (identification of projects)-Why should there be a separate identification of projects yet there would already be CIDP and ADP that has gone through public participation. There should be a validation process to avoid competing processes that create duplications and misuse of valuable resources.
45. The County Executive should provide tentative cost of individual projects to help the public make realistic proposition when discussing projects, they would like funded under this law as provided in Section 7(4)
46. The bill seems to go for different things at the same time. It seeks to push for intra county equity and intra ward equity at the same time. The reporting on implementation has to be placed in line with what the PFM requires in terms of quarterly reports. We should not have separate reporting on budget items that will already be captured in the budget estimates as indicated in Section 10. The bill should provide guidance on the size and number of projects that can be funded at any one time to avoid spreading the funds too thin. Lessons from counties like Elgeyo-Marakwet with the Equitable Development Act, 2012 show the risk of spreading even an equitable allocation too thin.

4.3 COMMISSION ON REVENUE ALLOCATION

47. Clause 2 Interpretation Definition of 'community':-Delete reference to 'location, sub location and village' as the term 'ward is all exhaustive and also defined under the proposed law.

48. Clause 4 Guiding principles:- Define 'marginalized areas' referred to under clause 4(c) Reference can be made to the marginalization policy on the identified marginalized areas.
49. Clause 5 County governments to ensure equitable development:- Make this provision coherent in terms of chronological order.
50. Clause 5(b) on the advice of the Commission on criteria for allocation of a specific amount:- Rephrase this provision to eliminate the advisory part by the Commission and instead refer to determination of criteria for allocation of revenue for the ward development projects identified under the Act according to the marginalization policy.
51. Clause 7 identification of projects- CEC should coordinate from Ward level only. There is need to introduce a middle tier coordinated by the ward administrators between CEC and village councils.
52. Clause 9 Criteria for selection of projects- This criteria is open ended and ambiguous due to use of terms such as 'basic goods and services' (see clause 9(i) and (ii), 'facilities' in clause 9 (a) (iii). It is unclear what these terminologies entail. Additionally in clause 9(d), reference to 'a cross section of the residents of a particular area' is also ambiguous:- Redraft this criteria for specificity.
53. Clause 12 Funds allocated to ward development projects-Under sub clause (4) (d) there is reference to 'demonstrable actual work' and sub clause (5) (c) refers to 'substantial work'-these terms are open ended.- Specify a threshold e.g. state in percentage form for specificity.
54. The Bill addresses 'equitable sharing of resources':- This should be narrowed down to 'revenue as opposed to 'resources' as the term 'resources' connotes diverse areas not subject of the Bill.

4.4 CONTROLLER OF BUDGET

55. The Controller of Budget submitted that it was in agreement with the provisions in the Bill the way it has been drafted.

4. UASIN-GISHU COUNTY ASSEMBLY COMMITTEE ON BUDGET AND APPROPRIATIONS

The Committee on Budget and Appropriations of the County Assembly of Uasin Gishu submitted as follows, that -

56. Section 5 (3) of the bill that reads "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" be amended to Read "In determining the criteria for allocation under subsection (2) (b), the county executive committee shall ensure that the allocation—

(a) is not less than thirty percent of the county government's allocation for development expenditure as provided under section 107 (2) (b) of the Public Finance Management Act, 2012".

57. That, most counties spent 70% of their budget on recurrent expenditure leaving a paltry 30% for development expenditure; and That, the 30% allocated for development expenditure by most counties is mainly conditional grants which accounts for 50% or more of the total development budget. Therefore the proposed 15% of the remaining 50% or less of the development budget is too little for a ward equalisation fund.

58. Section 6 (2) of the Bill which reads "The county assembly shall approve or reject the criteria within fourteen days of receipt of the criteria" be amended to read "The county assembly shall approve or reject the criteria within twenty one days of receipt of the criteria" This will enable the county assembly to effectively conduct public participation in line with article 201 of the CoK, 2010.

59. A new section 8 (2)(b) be introduced to read "The County Executive Committee Member for finance shall submit the approved projects to the County assembly for approval."

60. Section 8 (3) of the Bill that reads, "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." be amended to read "the county executive committee member after considering any recommendations made by the county assembly on projects to be implemented to publicize the projects by notice in the county

Gazette and through such other media as the county executive committee member shall consider appropriate.”

4.6 MR. DOMINIC MBOYA – YOUTH REPRESENTATIVE FROM HOMA-BAY COUNTY

Mr. Dominic Mboya submitted as follows, that -

61. Clause 5 (3) (a):- it should be 15% of the total budget and not development expenditure.
62. Clause 7(3):-there was risk of the marginalised groups- like youth, women and persons with disability- not involved in the identification of projects since the village councils are comprised of village elders.
63. There should be a mechanism to ensure funds set aside for specific projects are ring-fenced and not reallocated to other projects.
64. There is need to set mechanism to protect/ prevent embezzlement of public funds which are set aside for wards projects.

4.7 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA –ICPAK

The Institute of Certified Accountants of Kenya submitted that -

65. The law is created to cure an existing gap or protect mischief. The PFM Act was based on principle of equity and fairness but it was not implemented appropriately. If it was then, the County Wards (Equitable Development) Bill would not be necessary.
66. The mechanism for integrating the projects under the Act in the CIDP and the ADPs has not been provided.
67. The Bill advances some level of duplicity especially on public participation and setting aside some projects to be undertaken using 15% of the allocation to development.
68. Some counties may have already embraced the principle being fostered by the Bill but using different approach. The gaps been experienced may have resulted from absorption capacity of the counties. Since most of them perform poorly on utilisation of development budgets. The matters of equity been promoted in the bill may be dealt with if PFM Act was amended to entrench equity.

4.8 COUNTY ASSEMBLIES FORUM

The County Assemblies Forum submitted that –

69. In Part 2 of the Bill on Identification of ward-based projects for equitable development within counties include a clause for establishment of Ward Development fund Committees within each ward consisting of village elders, representatives of special interest groups within each respective ward. This will be in accordance with Article 174(d) which recognizes the right of communities to manage their own affairs and to further their development; and safeguard the interests of the women, youth, persons living with disabilities and children.
70. Clause 7. Identification of projects:- Revise the clause to provide for participation of Members of County Assembly (MCAs) elected in the respective wards. (3) The county executive committee member shall, for the purpose of subsection (2), collaborate with the respective village established in the county under section 53 of the County Governments Act councils and the MCA elected in the respective ward. This will ensure the participation of the elected ward representative in making decisions affecting the ward residents.

4.9 COUNCIL OF GOVERNORS

The Council of Governors had submitted that -

71. Clause 3 Objects and purposes of the Act:- The objects and purposes of this Act are to—
- (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 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; and
 - (d) to ensure equitable sharing of resources within the county
72. Include the following provision immediately after sub-clause (d) to read as follows: -
- (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.
73. To ensure equitable growth in the wards within the respective Counties, it is paramount to take into consideration the interests of the marginalized in the wards

74. Amend Clause 6 County assembly approval of criteria- 6(2) The county assembly shall approve or reject the criteria within fourteen days of receipt of the criteria. To read (2) The county assembly shall approve or reject the criteria citing reasons thereof in writing within fourteen days of receipt of the criteria.
75. Article 47 of the Constitution provides that a person has a right to be given written reasons for an action that has adversely affected them. In this regard and as a matter of good practice reasons for arriving at a certain decision ought to be provided for in writing. Such other media as the county executive committee member shall consider appropriate. To read 8 (3) The county executive committee member shall publicize the decision of the county executive committee by notice in the Kenya Gazette or County Gazette and through such other media as the county executive committee member shall consider appropriate. The County Gazette is yet to be established. Therefore, decisions by the County Executive Committee can be published through the Kenya Gazette and upon establishment of the County Gazette, decisions can be communicated through the County Gazette.
76. Amend Clause 8 on Selection of projects by the County Executive Committee- 8(3) The county executive committee member shall publicize the decision of the county executive committee by notice in the county Gazette.
77. Amend Clause 12 on 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. Introduce a new clause immediately after sub-section 2 to provide for instances within which a project can be cancelled or discontinued. For purposes of good governance, integrity, transparency and accountability as envisaged under Article 10 (2) (c) reasons for cancellation should be provided for.
78. Amend Clause 15:- Report to County Assembly 15 (1) A county executive committee member shall submit quarterly reports to the county assembly on setting out information on the – (a – o)
- (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).
79. Introduce a new clause immediately after sub-section 2 to provide for a sanction in the event misconduct is occasioned. To ensure strict adherence to the provision laid out in clause 15 (1), a sanction should be provided for in order to ensure that there is full compliance of the provisions.

4.10 NATIONAL TREASURY AND PLANNING

The National Treasury had submitted that -

80. Adequacy of the existing laws on fiscal decentralization-The objects that the Bill proposes to address have been adequately covered by the Constitution of Kenya (2010), County Governments Act, 2012 and Public Finance Management Act, 2012. The Constitution provides the guiding principles and framework of devolution and public finance. In addition, it provides for the Equalization Fund. Article 3, of the County Government Act provides for, inter-alia, the same objects as enumerated in the Bill. The PFMA has a clear and elaborate framework of financing County Governments, budget execution, monitoring and oversight. It is not clear what legal gap the Bill is addressing outside the exiting legal and regulatory framework.
81. The Bill negates on the fiscal powers of County Governments to plan, budget, spend and report on the revenue allocated pursuant to section 202 and 203 of the Constitution. Article 202 of the Constitution provides for equitable sharing of revenue between National and County Governments (equitable share) and additional resources from the National Government Share as conditional or unconditional transfers. Articles 203 stipulates that revenue allocation criteria should take into account, inter-alia, the need to ensure county governments are able to perform the functions allocated to them, developmental and other needs of counties and economic disparities within and among counties and the need to remedy them. Moreover, Article 189 (1) (a) prescribes that Government at either level shall perform its functions and exercise its powers in a manner that respects the functional and institutional integrity of government and other level. County Governments should hence be let to determine their development deeds.
82. Section 5(3) (a) of the Bill proposes to allocate not less than fifteen (15) per cent of County Governments allocation for development expenditure to ward based projects. The Constitution contemplates that County Governments should [plan, budget, spend and account for the revenue independently. Consequently, legislating a formula for sharing the revenue among sub-units of counties as proposed by the Bill means taking away the fiscal powers of County Governments to determine the allocation of resources among the various County Government's needs.
83. The Bill negates Economies of Scale of County Projects. The Bill seems to spread county resources thinly across all wards to implement ward based projects. Section 3 (a) proposes that more than 15 per cent of development budget can be channelled through a ward based project system. This has the potential of reducing the capacity of County Governments to finance large scale projects which transcend more than one ward and high socio-economic impact.
84. The Constitution stipulates that the sovereign power of the people is exercise at national and county levels which are distinct self-governing. That any law that is in consistent with the Constitution is void to the extent of the inconsistency. Counties are distinct entities and should be left to execute projects according to the County Integrated Development Plans, County Fiscal Strategy Paper and

any other County Policy document. The Bill offends some provisions some provisions of the Constitution. Besides, the objects of the Bill have been addressed by existing legal and regulatory framework.

5.0 COMMITTEE OBSERVATIONS

After perusal of the contents of the Bill and deliberation on the submissions, the Committee made the following observations:-That

- 1) The criteria for selection of projects under Clause 9 risks the creation of conflict and duplication of roles of the two levels of government. It would be prudent for the Bill to specify that the projects that the Bill would apply to are only those that fall under the purview of the functions of County Governments.
- 2) The use of the words “and through such other means as the County Executive committee member shall consider appropriate” in Clause 8 (3) may lead to validation of projects through means which may not serve the main purpose of publicizing the same.
- 3) The bill attempts to duplicate the County Government Act and Public Finance Management Act by re-legislating, which can be achieved via regulations.
- 4) Section 18 is superfluous in that it purports to donate legislation powers to County Assembly, which power already exists under the Constitution (Article 185)

6.0 COMMITTEE RECOMMENDATIONS

In light of the foregoing observations, members of the Committee were unanimous that the Proposed County Wards (Equitable Development) Bill, 2018 should not be proceeded with as it is unnecessary, since there are adequate existing laws on fiscal decentralization. The subsisting law has a clear and elaborate framework of Financing County Governments, budget execution, monitoring and oversight. There is no legal gap that the bill is addressing outside the existing legal and regulatory framework.

**MINUTES OF THE 29TH MEETING OF THE NATIONAL ASSEMBLY SELECT COMMITTEE
ON GOVERNMENT CONSTITUENCY DEVELOPMENT FUND HELD ON THURSDAY 6TH
AUGUST, 2020 AT 5TH FLOOR CONTINENTAL HOUSE, AT 2.30PM**

MEMBERS PRESENT

1. Hon. Wafula Wamunyinyi, M.P. -Chairperson
2. Hon. Omar Mohamed Maalim Hassan, M.P. -Vice Chairperson
3. Hon. Fred Kapondi Chesebe, M.P.
4. Hon. Richard Nyagaka Tongi, M.P.
5. Hon. Kassim Sawa Tandaza, M.P.
6. Hon. Ferdinand Wanyonyi, M.P.
7. Hon. John Lodepe Nakara, M.P.
8. Hon. Joshua Mwalyo, M.P.
9. Hon. Janet Jepkemboi Sitienei, M.P.

APOLOGIES

1. Hon. Moses Lessonet, M.P.
2. Hon. Sharif Athman Ali, M.P.
3. Hon. Cornelly Serem, MP
4. Hon. Onesmas Kimani Ngunjiri, MP
5. Hon. Benjamin Gathiru Mwangi, M.P.
6. Hon. Fred Ouda, M.P.
7. Hon. George Kariuki Macharia, M.P.
8. Hon. Josphat Gichunge Mwirabua Kabeabea, M.P.
9. Hon. Joseph Oyula, M.P
10. Hon. Sophia Abdi Noor, M.P.

IN ATTENDANCE: KENYA NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Angeline Naserian -Clerk Assistant III
2. Ms. Brigita Mati -Legal Counsel
3. Mr. Hassan Odhowa - Researcher

AGENDA

1. Preliminaries
2. Confirmation of the 28th Sitting Minutes
3. Consideration and approval of nominees to the National Government Constituencies Development Fund Committees for National Assembly Approval
4. Consideration and Adoption of the County Wards (Equitable Development) Bill 2018
5. Adjournment and the date of the next meeting.

MIN. NA/DCS/NG-CDF /2020/094 PRELIMINARIES

The Chairperson called the meeting to order at 2.44pm and prayers was said by Hon. Wafula Wamunyinyi, MP.

MIN.NA/DCS/NG-CDF/2020/095: CONFIRMATION OF THE 28TH SITTING MINUTES

The minutes of the 28th Sitting were confirmed as true record of deliberations after it was proposed by Hon.Kasim Tandaza Sawa, MP and seconded by Hon. Omar Maalim,MP.

MIN.NA/DCS/ND-CDF/2020/096: CONSIDERATION AND APPROVAL OF NOMINEES TO THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND COMMITTEES FOR NATIONAL ASSEMBLY APPROVAL

The committee considered and approved the submission of 7 nominees to the NG-CDF Committees as well as re-submission of one.

MIN.NA/DCS/NG-CDF/2020/097: CONSIDERATION AND ADOPTION OF THE COUNTY WARDS (EQUITABLE DEVELOPMENT) BILL,2018

A report on County Wards (Equitable Development) Bill, 2018 was considered by the committee with the following amendment to the Recommendation that : the County Wards (Equitable Development) Bill, 2018 should not be proceeded with as it is unnecessary since there are adequate existing laws on fiscal decentralization. The subsisting law has a clear and elaborate framework of Financing County Governments, budget execution, monitoring and oversight. There is no legal gap that the bill is addressing outside the existing legal and regulatory framework.

The report was therefore proposed by Hon.Omar Maalim,Mp and seconded by Hon.Kasim Tandaza,MP

Committee Resolution

The Board should be invited for a meeting on 18th August 2020 to table their expenditure report to the committee and brief the committee on the incomplete projects.

Also re-allocation of funds to cater for construction of extra classrooms which will be attributed by the high influx of students in schools come January 2020. It is therefore important for the Board to consider this matter as it is a requirement by the Ministry of Health due to Covid-19 pandemic.

MIN.NA/DCS/NG-CDF/2020/098: ADJOURNMENT

The meeting was adjourned at 16:30pm.

The date and time for the next meeting will be Tuesday 11th August 2020 and agenda being Meeting with the Cabinet Secretary the National Treasury.

Signature


HON.WAFULA WAMUNYINYI, M.P.

(Chairperson)

Date.....

11/8/2020



TWELFTH PARLIAMENT –FOURTH SESSION – 2020

THE NATIONAL ASSEMBLY

ADOPTION LIST

AGENDA: Consideration and Adoption of the Report on County Boards B

DATE: 6th August 2020 VENUE: 5th Floor, Continental.

	NAME	SIGNATURE
1.	Hon. Wafula Wamunyinyi, M.P. Chairperson	
2.	Hon. Omar Mohamed Maalim Hassan, M.P. -Vice Chairperson	
3.	Hon. Fred Kapondi Chesebe, M.P.	
4.	Hon. Moses Lessonet, M.P.	
5.	Hon. Richard Nyagaka Tongi, M.P.	
6.	Hon. Sharif Athman Ali, M.P.	
7.	Hon. Sophia Abdi Noor, M.P.	
8.	Hon. Ferdinand Wanyonyi, M.P.	
9.	Hon. John Lodepe Nakara, M.P.	
10.	Hon. Cornelly Serem, MP	
11.	Hon. Onesmas Kimani Ngunjiri, MP	
12.	Hon. Benjamin Gathiru Mwangi, M.P.	
13.	Hon. Janet Jepkemboi Sitienei, M.P.	
14.	Hon. Fred Ouda, M.P.	
15.	Hon. Joshua Mwalyo, M.P.	
16.	Hon. Kassim Sawa Tandaza, M.P.	
17.	Hon. George Kariuki Macharia, M.P.	
18.	Hon. Josphat Gichunge Mwirabua Kabebea, M.P.	
19.	Hon. Joseph Oyula, M.P.	

