

SPECIAL ISSUE

Elgeyo/Marakwet County Gazette Supplement No. 7 (Bills No. 7)



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REPUBLIC OF KENYA

**ELGEYO/MARAKWET COUNTY
GAZETTE SUPPLEMENT**

BILLS, 2014

NAIROBI, 3rd July, 2014

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THE ELGEYO/MARAKWET COUNTY EQUITABLE DEVELOPMENT BILL, 2014

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THE ELGEYO/MARAKWET COUNTY EQUITABLE DEVELOPMENT BILL, 2014

A Bill for

AN ACT of the county assembly of Elgeyo/Marakwet County to provide for realization of equal and equitable allocation of resources' for development projects within the ward; to provide for the creation of ward development oversight and advisory council giving them Powers, functions and responsibilities to deliver services and for connected purposes

ENACTED by the County Assembly of Elgeyo/Marakwet as follows;

PART I – PRELIMINARY

Short title and commencement

1. This Act may be cited as the Elgeyo/Marakwet County Equitable Development Act, 2014 and shall come into operation on the date of publication in the *Gazette*.

Interpretation

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

“~~Advisory council~~” means the council created under section 16 of this Act

“County development funds” means funds appropriated by the county assembly as development fund in any financial year

“County Flagship Projects” means County projects as provided for in the County Integrated Development plan 2013

“County government” means the county government of Elgeyo/Marakwet County

“County treasury” means the county treasury as created under the public finance management Act 2012

“County secretary” means the office established under section 44 of the county governments' Act

“CEC” means the office of the Executive Officer under the County Governments Act, 2012.

“Development plan” has the same meaning as for the public finance management Act

“Financial year” means the period of twelve months ending on the thirtieth June in each year;

for ward Administrator

“Fiscal plan” means the plan developed by the county government having met the requirements in the constitution and the public finance management Act

“Governor” means the Governor of Elgeyo/Marakwet

“Ward” means the wards as created under the constitution and having a representation in the county assembly

Objects and purposes of the Act

3. The Objects and Purpose of this Act is to;

- (a) Create equality in development projects in wards within the county
- (b) Create equitable development among wards in the county;
- (c) Create accountability mechanisms in development related matters in the county;
- (d) Ensure direct, continuous public participation in project identification, prioritization, implementation and oversight of projects and;
- (e) Align development projects to the county development plan

PART II EQUALITY IN DEVELOPMENT, EQUALISATION OF DEVELOPMENT, AND REPORTING MECHANISMS

Minimum development in the wards

4. (1). There is to be a set minimum development in every ward for every financial year, the minimum is to be set by the CEC in consultation with the people of the ward through the ward development advisory council, the minimum is to be known ^{by 31st March} in advance every financial year

(2). Within Three (3) years upon enactment of this Act, the County Government shall ensure that at least Forty Percent (40%) of the total annual Budget is allocated for Development.

Equal allocations to wards

5. (1) County executive officers shall ensure that at least sixty percent (60%) of the funds appropriated to their departments, for development purposes, are equally shared among the wards in the county.

(2) Where a development project is run by the county government directly, the responsible officer shall ensure wide consultations in identifying the project location; no funds of the county, grants, loans or donations may be spent by on a unilateral decision of an arm of government

(3) In meeting the requirements of section 5(2) the officer responsible must get the authority of the county assembly to spend such money and in a pre-determined manner. Where the recipient is the county assembly, on behalf of the county government, such money shall be appropriated in accordance with the ordinary budgetary process.

Equitable allocations to wards

6. (1) County executive officers shall ensure that at least forty (40) per cent of the funds allocated to them, for development purposes, are shared equitably among the wards.

(2) In sharing out the funds under S. 6(1) above, the county executive officer shall bear in mind a pre-determined formulae of considerations' approved by the county assembly

(3). The formulae and considerations used by the Commission of revenue allocation shall be used in sharing the funds with appropriate modifications and in particular;

- 30% (a) 40% shall be allocated in accordance with population;
- (b) 25% shall be shared according to poverty index in the wards;
- (c) 25% shall be allocated in accordance with County flagship projects;
- (d) 8% shall be shall be allocated in accordance in accordance with the land area and
- * (e) 2% shall be allocated in accordance with the fiscal responsibility.

2% to ASAN ARES
(4) Once approved by the County Assembly, the formulae shall apply to all county executive officers in discharging their mandate

Reporting by the county officers

7. (1) All county officers must submit quarterly reports to the county assembly on the absorption and non-absorption of funds

(2) The reports shall be in accordance the requirements with the public finance management Act 2012

(3) All Such reports shall contain a statement of compliance with section 4, 5 and 6 of this Act

(4) The county assembly shall upon receipt of such reports debate them and summon any person they deem fit.

Public procurement rules to be observed

8. (1) The public procurement and disposals Act 2005, the Public Procurement and Disposal Regulations of 2005, and any other law are to be followed and adhered to at all times and in particular;

- (a) No contracts may be awarded to a tender that is not prequalified in the financial year
- (b) All contracts must be made public and criteria for award is made clear
- (c) No member of the executive, his close relation, or a company which one directs may bid in for a contract while in office
- (d) Youth, women and persons with disability are to be given special considerations' upon being recognized by the relevant authorities, at least 30% of all County tenders shall be awarded to them as per Legal Notice No. 114 of the Public Procurement and Disposal regulations of 2013

Conflict of interest

9. Where a person has interest in a project in a personal capacity such person shall declare such interest at the earliest stage of the project and shall not be eligible to conduct the matters of the project any further than is necessary for handing over the control of the project.

Public participation

10. (1) All county officers shall involve the people at the county, sub-county and ward and all other units established under the County Government Act in all stages of a project.

- (2) Without prejudice to the generality of the above, the people shall;
- i. Before the commencement of a project be involved in the development of a plan for their wards and the prioritization of projects
 - ii. During the implementation of a project, be informed through the ward development advisory council of; the amounts allocated to each project, the commencement date and the completion dates of the projects
 - iii. At the completion of the project be informed of the true value of the project and be allowed to submit opinions on the project in presence of the CEC concerned or the chief officer in the office through with the project is implemented

- iv. The views of the people shall be put into minutes or memorandum by the advisory council and sent to the relevant member of the county assembly and the committee of the assembly concerned

Monitoring and evaluation of projects

11. (1) The county officer responsible a development project shall within 90 days of completion of a project, and in conjunction with the advisory council, report to the county assembly on a project's impact assessments in the ward. The report shall contain all details as to how the project is being run and its impact to the people of the ward.

** Amendment*
(2). At the end of every financial year, each ward shall have a one day open forum where each CEC shall report on projects implemented in the financial year, ending and the members of the public shall field questions, present memoranda and petitions.

Alignment of projects to the county development plan

12. County officers shall ensure all projects within a ward have been approved and are in the county development plan and shall be guided by the county development plan

Stalled projects

13. (1) County officers may revive stalled projects in a ward if the people of the ward feel the revival is absolutely necessary and the initial investor has absolutely abandoned the project

(2) Without prejudice to the above, an officer may allocate funds to a project that is already running with another or partner subject to this Act and any other law.

(3) No funds may be allocated to a different project with a similar impact within a ward if an existing project stalled

Power of the people to inquire into the priority and propriety of a development project

14. (1) The residents of a ward may with or without cause, and through the advisory council, seek to have more information about a project

(2) An individual may write to the relevant CEC requesting further information if the information is not within the knowledge of the advisory council

(3) The residents may through the, advisory council petition for the stopping of a project if impropriety is alleged and;

(4) Where such a petition is received no further funds may be paid to the project until all allegations of impropriety are dispensed with

The county treasury to provide guide

15. (1) The county treasury shall as a matter of norm to be read into section 105 of the public finance Act and as a principle under this Act, provide guidance to all the county officers on the implementation of the equalization and equality provisions of this Act.

(2) The guide shall be formulated as a proposal in the budget of each financial year to be adopted by the county assembly during the budgetary process in each financial year

PART III ADMINISTRATION AND OVERSIGHT

Establishment of the ward advisory development council

16. There is established a ward development advisory council to be ;

- i. The liaison body in development matters of the ward
- ii. Responsible for ensuring the public are continuously informed and involved in projects of the county government
- iii. Responsible for receipt and dissemination of public views on a project in the ward
- iv. Organizing and coordinating the meetings between county government and the people of the ward on development matters
- v. Responsible for ensuring that projects are in line with the ward development plan and the county development plans
- vi. A stakeholder in the development planning of the ward
- vii. Ensuring that the funds allocated for a project are totally spent on the project and connected purposes
- viii. Ensuring that a project involves and benefits the residents of the ward from inception to conclusion and;
- ix. Performing any other role as is necessary for the discharge of their functions.

Composition of the council

17. (1) The council shall be composed of;

- (a) The member representing the ward in the county assembly, being an ex-officio member
- (b) A representative of the private sector in the ward

- * Ward just has special interest*
- (c) A representative of Non-governmental organizations within the ward
- (d) A representative of the religious groups in the ward
- (e) A representative of the youth of the Ward
- (f) A representative of women from the Ward
- (g) A representative of persons with disability in the ward
- A representative of professionals in the ward*
- (h) A nominee of the sitting member representing the Ward in the Ward in the County Assembly ~~to represent~~ professionals in the Ward
- A representative of professionals in the ward*
- (3) The Ward Administrator and a representative of the local administrators shall be Ex-officio members of the Council

(4) The number of ex-officio members may be increased as may be necessary to bring in the necessary expertise in the council

18- PM C
19- PM C

(5) The CEC planning shall make regulations on the eligibility of a person to be a nominee to the council and the procedures of election subject to the approval of the County Assembly.

Conduct of business in the ~~advisory council~~

20- PM C
21- PM C
22- PM C

18. (1) The advisory council shall be responsible for the conduct of its business

(2) Without prejudice to the generality of the foregoing the office of a representative shall fall vacant;

- (a) If a member misses three consecutive sittings of the council without a reasonable explanation.
- (b) If a member is bankrupt, is of unsound mind or his integrity is put to question
- (c) If the member is found guilty of a crime and
- (d) If a member is found to hold undeclared conflict of interest while holding office

(3) Members of the advisory council shall within reasonable time make their own rules of procedure

PM C - New Clause 19,

REMUNERATION

** 19. (1).* Members of the council shall only be entitled to allowances at a rate to be fixed by the planning CEC in consultation with the county treasury and the CEC in charge of finance,

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The Elgeyo Marakwet County Equitable Development Bill, 2014



(2) Members of the council shall not be employees of the county or national government and shall not be remunerated as public servants

The equitable Development Sub- Committee on compliance

20. (1) Members of the executive shall ensure compliance to this Act through the equitable development sub-committee chaired by the Governor, deputized by the CEC planning. The CEC finance and the CEC responsible for special interest groups shall have seats in this sub-committee.

(2) The sole purpose of this organ shall be to ensure compliance with the Act and to be the executive consulting organ in reference to compliance with the Act

PART IV REVIEWS, REGULATIONS AND PENALTIES

Review of this Act

21. (1) The Act and its provisions shall be reviewed every financial year after the conclusion of the budgetary process of the year of review

(2) Reviews shall only begin to work in the financial year after the financial year in which the review was done

(3) The review may only originate in the county assembly or the county treasury, if it originates in the treasury it shall be in the form of a proposal contained in a memorandum

(4) No review may reduce percentage allocations for minimum equal development in the wards

Regulations

22. The CEC planning may develop additional regulations for the operation of the Act. The regulations shall not contradict the intentions of the Act.

Penalties

* 23. (1) For purposes of this Act, all persons found to be Acting contrary to the express provisions of this Act shall be liable to a fine not exceeding five hundred thousand Kenya Shillings, as a fine.

(2) Where such an offence is one that confers on the offender any financial or material gain the county government shall be entitled to recover from them an equal amount.

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MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons for the equitable development bill

The Bill aims to provide for equal and equitable prioritization of projects for wards in the Elgeyo/Marakwet County County.

PART 1 is the Preliminary and seeks to define terms and define the scope of the Act.

Part 2 is the policy provisions that guide the spirit of the Act.

PART 3 is the administrative and oversight part providing for the creation of oversight bodies and remuneration within the wards.

PART 4 talks of Reviews, savings, regulations and penalties.

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

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

Statement of how the Bill concerns County Government

The Bill concerns County government in terms of Article 110 (a) of the Constitution, and article 201(b) (iii).

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

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

Dated this 16th June, 2014.

THOMAS KIGEN.
Member of County Assembly.

5/24/2014

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[Signature]