

SPECIAL ISSUE

Kisumu County Gazette Supplement No. 5 (Bills No. 4)



REPUBLIC OF KENYA

**KISUMU COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2014

NAIROBI, 11th April, 2014

CONTENT

Bill for Introduction into the Kisumu County Assembly —

PAGE

The Kisumu County Wards Development Fund Bill, 2014 1



PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

NATIONAL COUNCIL FOR
LAW REPORTING
LIBRARY

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

COUNTY ASSEMBLIES FORUM (CAF)

P. O. Box 73552 - 00200,

NAIROBI, KENYA

**THE KISUMU COUNTY WARDS DEVELOPMENT FUND BILL,
2014**

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title and commencement.
- 2—Interpretation.
- 3—Object and purpose of the Act.
- 4—Establishment of Fund.
- 5—Establishment of the County Management Committee.
- 6—Business and affairs of the County Management Committee.
- 7—Functions of the County Management Committee.
- 8—Administrator of the Fund.
- 9—Secondment of staff.
- 10—Delegation by the County Management Committee.

PART II—FINANCIAL PROVISIONS

- 11—Disbursement from the Fund.
- 12—Allocation of funds.
- 13—Funds to be retained in the Fund.
- 14—Emergency reserve.
- 15—Bank account of the Fund.
- 16—Ward Fund Account.
- 17—Record of disbursements to be kept.
- 18—Remuneration and allowances.

PART III—SUBMISSION OF WARD PROJECT PROPOSALS

- 19—Submission of projects.
- 20—Submission deadline.
- 21—Submission form.
- 22—Projects description form.
- 23—Approval of projects.
- 24—Discretion of Ward Development Fund Committee.

- 25—List to be serialized.
- 26—Basis for budget ceiling.
- 27—Criteria for projects.

PART IV—TYPES OF PROJECTS

- 28—Projects to be community based.
- 29—Number of projects.
- 30—Cost estimates to be realistic.
- 31—Personal awards to be excluded.
- 32—Counterpart funding to be permitted.

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

- 33—Establishment of Ward Development Fund Committee.
- 34—Composition of the Ward Development Fund Committee.
- 35—Functions of the Ward Development Fund Committee.
- 36—Establishment of the County Assembly Select Committee.
- 37—Quarterly reports on the projects and disbursements.

PART VI—IMPLEMENTATION OF PROJECTS

- 38—Project Management Committee to implement.
- 39—Procurement of services and work.
- 40—Record of receipts and disbursement.
- 41—Audit.
- 42—Community initiatives to be eligible.
- 43—Duplication of projects to be avoided.
- 44—County Management Committee to prepare list.

PART VII— MISCELLANEOUS PROVISIONS

- 45—Member of the County Executive Committee to make regulations.
- 46—Provisions in the Act are complimentary.
- 47—Offences and penalties.
- 48—Dispute resolution.
- 49—Transition.

SCHEDULES

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

FOURTH SCHEDULE

*The Kisumu County Wards Development Fund Bill, 2014***KISUMU COUNTY WARDS DEVELOPMENT FUND****BILL, 2014****A Bill for**

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

ENACTED by the County Assembly of Kisumu County, as follows—

PART 1—PRELIMINARY

1. This Act may be cited as the Kisumu County Ward Development Fund Act, 2014, and shall come into operation upon the expiry of thirty days from the date of publication. Short title.

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

“Clerk” means the Clerk of the Kisumu 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 Ward 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 Executive Committee Member responsible for finance and economic planning;

“Administrator of 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;

“Ward Development Fund Committee” means the committee established under section 33;

3. The object and purpose of this Act is to ensure that a specific portion of the county annual budget is devoted to the Wards for purposes of development and in particular the alleviation of poverty at the Ward level.

Objects and
purpose

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 Administrator of the Fund under the direction of the County Management Committee.

Establishment of
Fund.

(2) The Fund shall consist of-

(a) an amount of not less than five percent of all the ordinary revenue of the 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 most recent audited accounts of revenue received, 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 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 Executive Committee Member in accordance with subsection (4) taking into account gender balance and the diversity of the County;
- (e) the Executive Committee Member responsible for legal matters;
- (f) the Administrator of the Fund who shall be an ex-officio member.

(3) The Executive Committee Member 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.

Business and
affairs of the
County
Management
Committee

(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 Act;
- (f) consider project proposals submitted for various wards in accordance with the 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; and
- (i) perform such other functions as may be provided for in this Act.

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

Administrator of
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 Administrator of 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;

The Kisumu County Wards Development Fund Bill, 2014

7

(c) prepare, sign and transmit to the Auditor General accounts of the Fund in accordance with 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.

(3) The Administrator of the Fund shall-

(a) be appointed by the Executive Committee Member after approval by the County Assembly;

(b) serve a term of four years but shall be eligible for reappointment.

9. (1) The Executive Committee Member 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, 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.

Delegation by the County Management Committee

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 outlines 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 29 (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 Executive Committee Member 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 in accordance with section 26.

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

Remuneration
and
allowances.

(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 Executive Committee Member 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

Submission of
projects

of the Ward Development Fund Committee to the County Management Committee after approval by the Ward Development Fund Committee for that Ward.

(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 has 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 Executive Committee Member 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 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.

Submission
form.

(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 Second 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 budget ceiling, for each Ward shall be

Basis for budget
ceiling.

- (a) eighty five percent of the amount specified in section 4 (2) (a) divided equally among all Wards;
- (b) fifteen per cent of the amount specified in section 4 (2) (a) divided by the population in the country multiplied by the number of inhabitants in that Ward as the last national population census.

(2) The Chairperson of a the relevant Committee of the County Assembly shall table in the Assembly a schedule showing the ceiling for each Ward, which shall be determined in accordance with sub section (1).

27. (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

28. (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.

(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 an education bursary scheme and

The Kisumu County Wards Development Fund Bill, 2014

can fund school fees, examination fees and even continuous assessment and mock examination fees;

- (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) purchasing, running and maintenance of motor vehicles and equipment must not take more than three percent of the total annual allocation.

29. (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.

30. (1) The Ward Development Fund Committee may make appropriate consultations with the relevant Government departments is done to ensure that cost

Cost estimates
to be realistic

estimates for the projects are as realistic as possible.

(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.

31. (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), an education bursary scheme, mocks and continuous assessment tests shall be considered as a development project for purposes of the Act provided that such a project shall not be allocated more than twenty five per centum of the total finds allocated for the Ward in any financial year.

32. 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.

Counterpart
funding to be
permitted

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

33 (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.

34. (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 forty-five 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 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 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 Administrator of the Fund County Executive

Committee for gazettelement;

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

(4) The Executive Committee Member 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 at in every ward in the Ward to deliberate on development matters in the ward and 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 of a new Ward Development Fund Committee in a manner provided in this Act.

(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.

35. (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.

36. (1) The County Assembly shall, in accordance with its Standing Orders, establish a Select Committee consisting of a chairperson and not more than ten other members of the County Assembly.

Establishment of
the County
Assembly Select
Committee

(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.

37. (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 the 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 the Act.

PART VII—IMPLEMENTATION OF PROJECTS

38. (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.

(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.

39. (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.

40. 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.

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

Audit

42. (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.

43. 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.

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

County
Management
Committee to
prepare list.

(2) The Ward 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.

(4) The existence of another allocation by Government to a different project in the county shall not be used as a reason to deny either approval or funding of any project consistent with this Act.

PART VIII—MISCELLANEOUS PROVISIONS

45. (1) The Executive Committee Member 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 Executive Committee Member 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.

46. (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.

47. 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 is liable on conviction, to imprisonment for a term not less than five years or to a fine not less than five hundred thousand shillings or to both.

Offences and penalties

48. (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 Executive Committee Member 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.

49. (1) The initial capital of the Fund shall be 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 years. Transition

(2) Notwithstanding subsection (1), if this Act comes into operation mid-way in a financial year, then the Leader of the Majority Party shall within one month of its publication, introduce in the Assembly the amount proposed to be put in the Fund and the amount proposed, shall be allowed for through supplementary estimates.

FIRST SCHEDULE (S.6)

CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNTY MANAGEMENT COMMITTEE

11. 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

22. (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;

Vacation of office

(b) be removed from office by the Executive Committee Member 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.

3. (1) The County Management Committee shall meet ^{Meetings} 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.

(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 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 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.

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 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 Administrator of 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.

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 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

SECOND SCHEDULE (s. 11(5))

PROJECT RE-ALLOCATION FORM

THIRD SCHEDULE (s. 21)

WARD PROJECTS SUBMISSION FORM

FOURTH SCHEDULE (s. 22)

PROJECT DESCRIPTION FORM

MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to establish the Wards Development Fund into which an amount equivalent to five per cent of the total County Government annual revenue shall be paid into so as to facilitate 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.

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 Administrator of the Fund under the direction of the County Management Committee.

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 moneys from the Fund which shall be based at eighty five percent equality and fifteen percent based on population and other factors.

Part V of the Bill provides for the type of projects that may be included for funding under this Act. 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 and a maximum number in a bid to avoid spreading out too thin. The eligibility of some projects for funding such as counter – 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 to, oversee the process of receiving and forwarding project proposals to the minister among other functions.

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 actual implementation of the Ward based projects be done by the relevant County Government Department in a Ward.

Part VIII of the Bill provides for miscellaneous clauses to ensure proper utilization of funds and also provides for penalties against any person who misappropriates funds meant for development projects under the Bill.

CHARLES AGUKO AGUKO,

Chairman, Planning, Trade, Tourism and Co-operatives.

COUNTY ASSEMBLIES FORUM (CAF)

P. O. Box 73552 - 00200,

NAIROBI, KENYA