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THE MAKUENI COUNTY EQUITABLE DEVELOPMENT BILL, 2016

A Bill for

AN ACT of the County Assembly of Makueni to provide for the realization of equitable allocation of resources for development projects within the wards of the county; to provide for the establishment of Ward Project Development Committees, to provide for monitoring of projects to ensure all development funds allocated to projects are properly used for the purpose for which they were appropriated and for connected purposes

ENACTED by the County Assembly of Makueni as follows—

PART—I PRELIMINARY

Short title and commencement

1. This Act may be cited as the Makueni County Equitable Development Act, 2016 and shall come into operation on such date as the County Executive Committee Member may, by notice in the Gazette, appoint.

Interpretation

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

“County executive committee member” means the County Executive Committee Member for the time being responsible for matters relating to finance;

“government” means the County Government of Makueni;

“county development funds” means funds appropriated by the County Assembly for development purposes in any financial year;

“county secretary” means the office established under section 44 of the County Governments Act;

“county treasury” means the entity established under section 103 of the Public Finance Management Act;

“development committee” means the Ward Project Development Committee established under section 13 of this Act. “Project Management Committee” means the committee established under section 15 of this Act.
Purpose of Act

3. The purpose of this Act is to—
   (a) promote equality in distribution of development resources within the wards in the county;
   (b) enhance public participation in project identification, prioritization, implementation and oversight of projects;
   (c) enhance accountability in use of development funds of the county; and ensure development projects are aligned to the County Integrated Development Plans.

PART II—EQUITABLE DEVELOPMENT MECHANISMS

Development requirements per ward

4. (1) The County Executive Committee Member shall, not later than the 31st day of November in each year, on the advice of the Development Committee, and with the approval of the County Assembly set a minimum development requirement for each ward for the coming financial year.

   (2) The County Executive Committee Member shall ensure that the funds identified in (a) above are incorporated in the County Fiscal Strategy Paper of the following year.

   (3) The County Executive Committee Member, in consultation with the County Assembly, shall ensure that at least forty per cent (40%) of the total annual budget is allocated for county development, within three years of the coming into effect of this Act.

Equal allocation of development funds

5. (1) Each County Executive Committee Member shall ensure that fifty percent (60%) of the funds appropriated to the department for development purposes are shared equally among the wards in the county.

   (2) Where the project is one of the flagship projects of the county and involves huge expenditure of resources and its impact is countywide, the responsible County Executive Committee Member of the responsible department shall ensure that wide consultations are carried out in identifying the project and the location and approval of the county assembly is obtained.

   (3) Where the recipient is the County Assembly, such money shall be appropriated in accordance with the ordinary budgetary process.
Equitable allocation of funds

6. (1) Each County Executive Committee Member shall ensure that forty per cent (40%) of the funds allocated to the department for development purposes are equitably shared among the wards in the county.

(2) In sharing out the funds under subsection (1) above, the County Executive Committee Member shall use a formula developed by the County Executive Committee Member responsible for finance and with approval of the County Assembly.

(3) In developing the formula in (2) above, the County Executive Committee Member shall consider the population, poverty index, land area of each ward and to give special consideration to the arid and semi-arid areas.

Reports on Absorption of Development Funds

7. (1) All County Executive Committee Members shall submit to the County Assembly quarterly reports on absorption of development funds.

(2) The reports submitted in (1) above shall include reasons for non-absorption or slow absorption of funds.

(3) The report submitted under subsection (1) above shall stand committed to the relevant Sectoral Committee to be dealt with in accordance with the County Assembly Standing Orders, within 20 days of such committal.

(4) The County Assembly shall, upon receipt of the report from the committee under subsection (3) above debate the report within 30 days.

Public participation

8. (1) County Government officers shall promote and sustain public participation in development projects and to this effect, shall involve the people to be affected by any development project in the county, sub-county, ward or any other lower level of decentralization.

(2) The people in subsection (1) above shall—

(a) be involved in the preparation of a development plan for their wards and prioritization of projects to be undertaken;

(b) during the implementation of any project, be informed through the Development Committee, of the funds allocated to each project and the commencement and completion dates of the project;
(c) at the completion and launch of the project, be informed of the value of the project and be allowed to give comments on the performance and impact of the project.

The views of the communities and the people shall be recorded in the minutes of the meeting by the Development Committee and forwarded together with the project report to the County Assembly.

Monitoring and evaluation

9. (1) The County Executive Committee Member responsible for a project shall within sixty days of completion of a project, submit a report on the impact of the project to the people in the ward to the County Assembly.

(2) Within ninety days after the end of the financial year, the County Government shall hold a one day open forum in each ward where the county secretary shall report on all projects implemented in the ward in the financial year ending and members of the public shall give their comments and ask questions seeking any clarification on the projects.

Align projects to CIDP and ADP

10. County Executive Committee Members shall ensure that all projects within the wards have been approved and are contained in the County Integrated Development Plan and or the Annual Development Plan

Completion of all projects commenced

11. (1) The County Executive Committee Members shall ensure that all projects commenced in their respective departments are completed within the stated timeline.

(2) The County Executive Committee Member may include in the annual development plan any projects, which may have been commenced earlier but have stalled and allocate funds for their completion.

(3) The County Executive Committee Member may not allocate funds to different projects with a similar impact to an existing stalled project in the same ward.

Right to information by residents.

12. (1) Any resident of a ward may seek in writing to the Development Committee, and upon giving reasons, seek to have more information about a project.

(2) If the information required under subsection (1) is not within the knowledge of the Development Committee, the Committee shall channel the same to the relevant County Executive Committee Member.
PART III—ADMINISTRATION

Ward Development Committee

13. (1) There is established in each ward a Wards Project Development Committee composed of—

(a) one person representing religious organizations in the ward;
(b) one person representing the youth in the ward;
(c) one person representing the women in the ward;
(d) one person representing persons with disability in the ward;
(e) one person representing professionals in the ward; and
(f) the ward administrator who shall be the secretary to the committee.

(2) The members of the Development Committee in (a), (b), (c), (d) and (e) above will be competitively appointed by the Public Service Board and approved by the County Assembly.

(3) The Development Committee may co-opt not more than two members with specialized knowledge or expertise when need arises to assist in the discharge of specific functions of the committee and on such terms as the County Public Service Board may determine.

(3) The members of the Development Committee shall serve for a term of three years renewable once.

(4) The members of the Development Committee will serve on such terms and conditions of service as shall be determined by the County Public Service Board.

(5) The County Executive Committee Member shall with approval of the County Assembly, make Regulations regarding the qualifications of the members of the Development Committee.

(6) The members of the Development Committee will elect a chairperson from amongst the membership.

(a) subject to subsection (6) above, the office of a member shall fall vacant if a member—
(b) resigns by a letter addressed to the secretary of the Development Committee;
(c) dies;
(d) is incapacitated such that he cannot perform his duties;
(e) misses three consecutive meetings of the Development Committee without reasonable cause;
(f) is declared bankrupt;
(g) is of unsound mind;
(h) is found guilty of an offence punishable by imprisonment of over six months;
(i) is found to hold an undeclared interest in a project in the ward; or
(j) when one contravenes provisions of chapter six of the Constitution of Kenya.

(a) Whenever a vacancy occurs in the Development Committee by reason of resignation, incapacitation, demise of member or removal of member for the reasons stated above, the County Public Service Board shall fill the vacancy from the same category of persons from where the vacancy arose.

**Functions of the Development Committee**

14. The functions of the Development Committee shall be to—

(a) co-ordinate all county funded development projects in the ward;
(b) deliberate on project proposals from the ward and draw up a priority list, both immediate and long term to be shared with the county Executive Committee Members for inclusion in the budget.
(c) ensure that members of the public are continuously informed and involved in development projects of the County Government;
(d) receive and disseminate public views on development projects in the wards;
(e) organize and co-ordinate meetings between the county government and the people of the wards on development projects;
(f) ensure that the funds allocated for the different projects are spent on the relevant projects and connected purposes;
(g) ensure that projects implemented in the wards involve and benefit the residents of the relevant wards from inception to conclusion.
(2) The Development Committee shall have the powers necessary for the proper performance of its functions under this Act and in particular but without prejudice to the generality of the foregoing, the committee shall have power to—

(a) monitor and evaluate projects within the ward;
(b) ensure the contractors comply with the contracts and terms of award of the contract;
(c) build the capacity of residents to actively and meaningfully participate in projects identification and monitoring and evaluation of ongoing projects;
(d) co-ordinate activities of the Project Management Committees;
(e) Prepare and submit quarterly reports on development projects implemented in the wards to the relevant County Executive Committee Member.

(3) Subject to subsection (4), the business and affairs of the Development Committee shall be conducted in accordance with the first Schedule.

(4) Except as provided in the first schedule, the Development Committee may regulate its own procedure.

**Project Management Committee**

15. (1) There is established a Project Management Committee for each project composed of the following—

(a) the village administrator of the area or a nominee of the ward administrator, resident of the village where project is to be undertaken, who shall be secretary to the committee;
(b) one person representing the private sector from the project area;
(c) one person representing religious organizations from the project area;
(d) one person representing youth from the project area;
(e) one person representing women from the project area; and
(f) one person representing professionals in the project area;

(2) The Project Management Committee may co-opt a maximum of two people with expertise in the subject matter of the project;
(3) The members of the project management committee except the village administrator will be appointed by the County Executive Committee Member responsible for the project following an election by the residents living near the project area.

**Functions of the Project Management Committee.**

16. The Project Management Committee shall be responsible for the effective implementation and management of the project for which it is appointed including but not limited to the following—

(a) Undertake management of specific development projects in the ward;

(b) prepare work plans based on estimates and cause to be kept books of account and records of income, expenditure and liabilities of the project;

(c) supervise implementation of the project to be in line with the approved bills of quantities;

(d) ensure linkages between county plans and the project implementation and management;

(e) assessment of works done and approval of certificates of payment based on the contractual terms and the level of completion; and

(f) monitoring of project to ensure it is undertaken in line with the prepared work plan and report to the County Executive Committee Member responsible in case of any delays.

**PART IV—FINANCIAL MANAGEMENT**

**Ward Fund account.**

17. (1) For purposes of disbursement of funds purpose of disbursement of funds under this Act, there shall be opened and maintained a ward account for every ward at a bank approved by the County Executive Committee Member for Finance, into which all revenue allocated to the ward for development shall be kept.

(2) The bank account opened pursuant to subsection (1), shall be separate from that of the county treasury and shall be known by the name of the ward for which it is opened and each ward shall maintain only one account.

(3) At least three signatories shall be required for every cheque or instrument for actual payment or withdrawal of funds from a ward development account and the signing instructions shall be such that the
signature of the ward administrator shall be mandatory and at least one signature of the two members designated by the Development Committee.

(4) Funds from the ward development account shall only be withdrawn as disbursements for a particular project in accordance with the provisions of this Act.

(5) Every payment or instruction for payment out of the ward development account shall be strictly on the basis of a recorded resolution of the Ward Development Committee and supported by minutes of the Project Management Committee recommending payment;

(6) All unutilized funds at the end of the financial year or funds meant for a project that is cancelled or discontinued shall be transferred back to the county treasury.

(2) The annual estimates shall make provision for all estimated expenditure of the Institute for the financial year and in particular, the estimates shall provide for—

(a) the payment of the salaries, allowances and other charges in respect of members of the Board and staff of the Institute;

Records of disbursements

18. (1) Project Management Committee shall keep a record of disbursements made for any development project it is responsible for and submit the same at the end of every month to the Ward Development Committee;

(2) The Ward Development Committee shall keep and update accurate monthly records of all disbursements made for development projects and activities in every ward.

(2) The Chairperson of the Ward Development Committee shall submit an annual report on the activities, operations and expenditure of the committee under the Act to the County Assembly through the relevant County Executive Committee Member.

PART V—MISCELLANEOUS PROVISIONS

Establishment of an Equitable Development Committee.

19. (1) There is established a County Assembly committee on Equitable Development consisting of five Members of the County Assembly.

(2) The Committee shall be responsible for the following—
(a) ensuring compliance with the provisions of this Act;
(b) reviewing the formula of sharing development revenue between the wards before approval by the county assembly;
(c) reviewing the formula of sharing development revenue between the wards before approval by the county assembly;
(d) reviewing the formula of sharing development revenue between the wards before approval by the county assembly.

Regulations

20. The Executive Committee Member, may with the approval of the County Assembly, make regulations generally for the better carrying into effect the purposes of this Act.

SCHEDULE

PROVISIONS RELATING TO CONDUCT OF BUSINESS AND AFFAIRS OF THE DEVELOPMENT COMMITTEE

Meetings

(1) The Development Committee shall meet at such place as the Chairperson may determine and the meetings shall be convened by the Chairperson.

(2) The Development Committee shall have at least four meetings in every financial year and not more than three months shall elapse between one meeting and the next meeting.

(3) Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every Member by the secretary.

(4) The Chairperson may, at his or her discretion or at the written request made by at least half of the Members of the Development Committee and within seven days of the request, convene an extraordinary meeting at such time and place as the Chairperson may appoint.

(5) Every meeting of the Development Committee shall be presided over by the Chairperson and in his or her absence, the Vice-Chairperson shall preside.

(6) The Members of a Development Committee shall elect a Vice-Chairperson from among themselves—

(a) at the first sitting of the Development Committee; and
(b) whenever it is necessary to fill the vacancy in the office of the Vice-Chairperson.

(7) Where the Chairperson or Vice-Chairperson is absent, the Members shall appoint from among themselves, a person to Chair the meeting of the Development Committee.

(8) The Development Committee may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Development Committee.

**Quorum**

21. (1) Subject to subparagraph (1), the quorum of at any meeting of the Development Committee shall half of the appointed Members of the Development Committee.

(2) Where the persons present at a meeting of the Development Committee do not constitute the quorum necessary to hold a meeting under this Act or where by reason of exclusion of a member from a meeting, the number of Members present falls below the quorum necessary to hold a meeting, the Development Committee shall postpone the consideration of the matter in question until there is a quorum.

**Minutes**

22. The secretary shall cause minutes and proceedings of all the meetings of the Development Committees to be entered into the minute-book kept for that purpose.
MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide for the realization of equitable allocation of resources for development projects within the wards of the county and to ensure that funds allocated for development projects in any financial year are used for the purpose for which they have been appropriated and are utilized in the year in which they are planned to be used.

The Bill also proposes to establish the Ward Project Development Committees to manage and monitor implementation of projects in the wards.

The enactment of this Bill shall occasion additional expenditure of public funds to be provided for in the estimates.

PAUL MALINDA,
Member of the County Assembly.