

**THE THARAKA NITHI COUNTY EQUITABLE DEVELOPMENT BILL, 2019**

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Clause

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THE THARAKA NITHI COUNTY EQUITABLE DEVELOPMENT BILL, 2019

A Bill for

AN ACT of the County Assembly of Tharaka Nithi to provide a Framework for the promotion of equitable growth in the Wards within The County by providing for the allocation of funds for Ward based Development projects; to provide mechanisms for selection of projects; to provide an oversight mechanism for the utilization of funds allocated for Ward based development projects; and for connected purposes.

ENACTED by the Tharaka Nithi County Assembly, as follows—

**PART I—PRELIMINARY**

1. This Act may be cited as the Tharaka Nithi County Equitable Development Act, 2019.

2. Commencement date: upon gazettement.

3. In this Act, unless the context otherwise requires-

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

“Community” means residents of a particular geographical area or Region defined as a Ward, Location, Sub-Location or Village and having Common interests;

“County” means County Government of Tharaka Nithi;

“County Executive Committee Member” means the County Executive Committee Member as defined under Section 35 of the County Governments Act, 2012;

“Development Expenditure” means total development vote of the County including all grants;

“Relevant Committee” means the County Assembly committee Responsible for matters related to Finance and Budget;

“Salaries and Remuneration Commission (SRC)” means commission on salaries and remuneration as established under Article 215 of the Constitution of Kenya, 2010.

“Ward” means the Wards as created under the Constitution of Kenya, 2010;  
and

“Ward Project Identification Committee” means committee Established under Section 12 of this Act.

**4. The objects and purposes** of this Act are 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 the County to;

- a) Provide a framework for the participation of the residents of each Ward in the identification of priority projects in the County in respect of which funds are allocated under this Act;
- b) Promote the decentralisation of functions and provision of services by County Governments to the extent that it is efficient and practicable pursuant to Article 176 of the Constitution; and
- c) Ensure equitable sharing of resources within the County.

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

- a) the promotion of the social and economic development of all persons residing within the Ward in order to ensure the realisation of their economic and social rights under Article 43 of the Constitution of Kenya, 2010;
- b) the principles and objects of devolution set out under Articles 174 and 175 of the Constitution of Kenya, 2010;
- c) Equity and the need to ensure that persons residing in marginalised areas in the Wards access facilities and services that are available to the residents within the County; and

- d) The promotion of the national values and principles of governance set out under Article 10 of the Constitution of Kenya, 2010.

**PARTII—IDENTIFICATION OF WARD PROJECTS FOR EQUITABLE DEVELOPMENT WITHIN THE COUNTY**

6. (i) The County Government shall allocate its resources equitably across all Wards in the County.

(ii) For purposes of subsection (i) the County Executive Committee shall within the medium term, ensure that development projects are spread out equitably across all the Wards in the County.

(iii) The following criteria shall apply in the expenditure of development funds:

- a) Not less than forty percent (40%) of the County Government's allocation for development expenditure shall be set aside for Ward development and shall be distributed equally to all the Wards within the County;
- b) At least 5% of the Ward allocation in Section 6(iii)(a) shall be appropriated for affirmative action within the Ward;
- c) The remaining development funds shall be for flagship projects and shall be distributed equitably within the County through public participation; and

d) Complimentary to any other development efforts by the County Government or any other agency.

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

(v) County Government development allocations shall continue alongside the projects funded under this Act.

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

(2)The County Executive Committee Member for Finance and Economic Planning shall coordinate and facilitate the process of identifying projects for implementation under this Act in the Wards and shall, for this purpose ensure public participation in all the Sub-Locations.

(3)The County Executive Committee Member responsible for Finance and Economic Planning shall, for the purpose of sub-section (2), collaborate with the respective Ward Project Identification Committee established under this Act.

(4)The County Executive Committee Member responsible for Finance and Economic Planning shall designate County public service officers to offer technical assistance to the Ward Project Identification Committee during the project identification processes.

(5) Project proposals shall be submitted to the County Executive Committee Member responsible for Finance and Economic Planning not later than 15<sup>th</sup> August of each year.

8. (1)The County Executive Committee Member for Finance and Economic Planning shall consolidate and submit the proposals received under Section 7 (5)to the County Executive Committee for consideration of projects for implementation in each Ward.

(2)The County Executive Committee Member responsible for Finance and Economic Planning shall submit the proposals in Section8(1) to the County Assembly for approval with or without amendments by1st September each year.

(3)The County Executive Committee Member responsible for Finance and Economic Planning shall publicize the recommendations of the County Assembly by notice in the Kenya Gazette and through such other media as the County Executive Committee Member responsible for Finance and Economic Planning shall consider appropriate.

(4)The County Executive Committee Member responsible for Finance and Economic Planning shall align the project identification and selection

processes with the County budget cycle as set out in the Public Finance Management Act, 2012.

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

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

i. ensuring the development of infrastructure that would promote the delivery of basic services and goods to persons residing at the lowest unit of decentralization established pursuant to Section 54 of the County Governments Act, 2012;

ii. enhancing the standards of living of persons residing within the respective Ward through the delivery of basic goods and services;

iii. promoting access to facilities that are key in the delivery of services to residents in the respective Wards; or

iv. promoting the economic development of residents within the respective Ward through activities that promote the development of talent, growth of micro and small enterprises and access to markets;

(b) falls within the scope of functions of County Government as set out under Part 2 of the Fourth Schedule of the Constitution of Kenya, 2010;

(c) does not duplicate any other project being under taken under the County Government, National Government or any other development agency;

(d) is of such nature as to ensure that the prospective benefits arising out of the project are available to a cross-section of the residents of a particular area; and

(e) meets such other criteria as a County Government may, in

County legislation, prescribe.

10. The projects identified under Section 8(2) shall be included in—

a. the Annual Development Plan provided for under Section 126 of the Public Finance Management Act, 2012;

- b. the County Fiscal Strategy Paper provided for under Section 117 of the Public Finance Management Act, 2012;
- c. the County budget estimates provided for under Section 130 of the Public Finance Management Act, 2012; and
- d. any other plan or document provided for under law, which may be determined by the County Treasury as being necessary for the implementation of this Act.

### **PARTIII—IMPLEMENTATION OF PROJECTS**

11. For the purposes of this Act, the County Executive Committee Member responsible for Finance and Economic Planning shall—

- a) ensure timely and efficient disbursement of funds and priority given for the implementation of Ward development projects identified in Section 8(2);
- b) ensure efficient management of the funds in the implementation of County Ward development projects;
- c) co-ordinate the implementation of projects at inter Ward level;
- d) receive and address complaints that may arise from the implementation of this Act;
- e) keep an inventory of all projects undertaken by the County Government under this Act;
- f) encourage best practices in the implementation of projects; and
- g) perform such other duties as may be necessary for the proper implementation of this Act.

12. There is established in every Ward a Ward Projects Identification Committee.

13. Composition of the Ward Projects Identification Committee

(1) The Ward Projects Identification Committee shall be composed of

- a) one person representing the business community in the Ward;



- b) one person representing Non-Governmental organizations within the Ward;
- c) one person representing religious groups in the Ward;
- d) one person representing the youths of the Ward;
- e) one person representing the women from the Ward;
- f) one person nominated by a registered group representing persons with disability in the Ward;
- g) one person representing professionals in the Ward;
- h) the Ward administrator who shall be the secretary; and
- i) one representative of the local administrators who shall be ex-officio members to the Ward Projects Identification Committee.

(2) in nominating the members under Section 13(1) consideration shall be given to regional representation, gender balance and ethnic minority groups obtained through public participation.

(3) The Ward Projects Identification Committee may co-opt not more than three members with specialized knowledge or expertise to assist in the discharge of specific functions of the Committee on such terms as the Committee may specify.

(4) The term of office of the members of the Ward Projects Identification Committee shall be three years. The term of office shall not exceed two terms.

(5) Whenever the term of members of the Ward Projects Identification Committee ends, they shall continue to hold office until a new committee is appointed within reasonable time.

(6) The County Executive Committee Member responsible for Finance and Economic Planning shall coordinate and facilitate a public participation forum for the nomination of the Ward Project Identification Committee members in Section 13 of this Act and appoint.

(7)The Ward Project Identification Committee shall be constituted not later than 30 days after commencement of this Act.

(8)To be eligible for nomination to the Ward Projects Identification Committee, one shall;

- i. be a Kenyan citizen above 18 years of age;
- ii. be a resident of the respective Ward;
- iii. have a minimum of O-level academic qualification;

(9)The Ward Project Identification Committee shall elect the Chairperson in its first sitting. In the absence of the Chairperson, members may nominate one member to chair the meeting.

(10) The Ward Project Identification Committee shall sit at least four times but not more than six sittings in the same Financial Year.

(11) Subject to Section 13(1),the office of a Member shall fall vacant if a Member

- a) dies
- b) misses three consecutive sittings of the Ward Projects Identification Committee without a reasonable explanation;
- c) is declared bankrupt, is of unsound mind or his or her integrity is put to question;
- d) is found guilty of a crime;
- e)is found to hold undeclared conflict of interest while holding office; or
- f) when one contravenes the provisions of Chapter 6 of the Constitution of Kenya, 2010.

(12) Whenever a vacancy occurs in the Ward Projects Identification Committee, the vacancy shall be filled from the same category of persons where the vacancy has occurred.

14. Quorum of the Ward Projects Identification Committee shall be two thirds.

15. Members of the Ward Project Identification Committee shall operate on part-time basis and only be entitled to allowances at a rate to be fixed by the County Executive Committee Member responsible for Finance and Economic Planning in consultation with Salaries and Remuneration Commission (SRC).

16. Functions of the Ward Projects Identification Committee

The functions of the Ward Projects Identification Committee shall be to;

(a) Co-ordinate the identification of Ward development projects in the respective Ward through public participation;

(b) analyze, consider and consolidate project proposals in Section 4(1) and submit to the County Executive Committee Member responsible for Finance and Economic Planning;

(c) ensure that the public is continuously informed and involved in Ward projects and other developments of the County Government in the Wards;

(d) while identifying Ward development projects the Committee shall take into consideration the 5% allocated for affirmative action and identify projects for the same;

(e) receive and disseminate public views on Ward projects and development matters in the Wards;

(f) organize and co-ordinate meetings between the County Government and the people of the Wards on development matters; and

(g) organize and incorporate all stakeholders in Ward development plans.

17.(1) Funds allocated for a project shall only be reallocated for any other purpose during the financial year with the approval of the County Assembly.

(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 department and Ward.

(3)Where—

a) a project is to be carried out for a period of more than one financial year; and

b) the financial obligations relating to the project exist for the subsequent year, the County Executive Committee Member for Finance and Economic Planning shall seek the approval of the County Assembly for the appropriation of monies in the subsequent financial year during which the project is to be undertaken for the completion of that project.

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

a) there is in place an existing contract for the implementation of the project in the current financial year including the potential of significant penalties for the cancellation or delay in implementation of the contract;

b) there is in place, a cost sharing agreement with the National Government or any other entity that contributes at least forty nine percent (49%) of the total cost of the project;

c) it is determined that the monies allocated for the carrying out of the project are not adequate; and

d) there is demonstrable actual work in progress in relation to the project.

(5)The County Executive Committee Member for Finance and Economic Planning and the County Assembly shall not approve the reallocation or appropriation of funds under su-sections (2) or (3) unless—

a) a contractor financial commitment exists in relation to the Funds allocated to project;

b) the completion time for the project does not extend to a period of more than two years; and

c) substantial work has commenced on the project and it cannot be completed within a period of one year.

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

(7) All funds allocated to a Ward shall be cumulative and shall be carried forward from one financial year to the next, including funds returned into the County Treasury or funds which are not utilized for whatever reasons.

#### **PARTIV-REPORTING AND OVERSIGHT**

18.(1) The County budget or County plan under the County Governments Act, 2012 or the Public Finance Management Act, 2012 dealing with allocation of resources shall clearly indicate the manner in which the resources have been equitably distributed across the Wards in the County.

(2) The County Assembly—

a) shall not approve a County plan or budget that does not comply with subsection(1);and

b) may amend a County plan or the development expenditure in the County budget in order to ensure the equitable allocation of resources across the Wards of the County.

19. The County Executive Committee Member for Finance and Economic Planning shall maintain comprehensive and accurate records including a system of internal accounts with respect to the projects, the process of accountability and the conduct of audits in relation to the funds allocated under this Act.

20. The County Executive Committee Member responsible for Finance and Economic Planning shall submit quarterly reports to the County Assembly on setting out information on—

a) the projects under implementation and the status of the implementation of such projects;

b) monies expended with respect to each project;

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

1) It shall be gross misconduct for a County Executive Committee Member responsible for Finance and Economic Planning to fail to report to the County Assembly Committee on matters provided for under subsection(1)

21.The Relevant Committee of a County Assembly shall—

- a) scrutinize the County budget and the County plans referred to under this Act, the County Governments Act,2012, the Public Finance Management Act,2012 to ensure compliance with this Act and the integration of the principle of equitable development in the budget and the plans;
- b) scrutinize the reports of the County Executive Committee Member responsible for Finance and Economic Planning and make appropriate recommendations to the County Assembly;
- c) upon petition by a member of the public or on its own initiative, conduct inquiries on any project that the committee suspects impropriety;
- d) oversee the implementation of the policy framework and legislative matters that may arise in relation to this Act;
- e) engage the Commission on Revenue Allocation, the County Executive Committee Member responsible for Finance and Economic Planning and any other relevant stakeholder so as to jointly deliberate and provide solutions to issues relating to achieving equitable development within the County; and
- f) undertake any other function as may be assigned by the County Assembly.

#### **PARTV—MISCELLANEOUS PROVISIONS**

22.Any person who misappropriates any funds, assets or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Act commits an Offence and shall, upon conviction, be liable to imprisonment for a term of not less than five years or to a fine of not less than five hundred thousand shillings, or both.

23.The County Executive Committee Member for Finance and Economic Planning may, with the approval of the County Assembly, make Regulations generally for the better carrying into effect the purposes of this Act.

### **MEMORANDUM OF OBJECTS AND REASONS**

The Bill principally seeks to promote the decentralization of development within the County by creating a framework for identifying projects that are beneficial to the residents of the respective Wards and the County generally and providing a framework for the implementation of such projects. The Bill is premised on Article 174 of the Constitution of Kenya, 2010 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 rights 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 of Kenya, 2010; and



d )to ensure equitable sharing of national and local resources throughout Kenya.

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

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

**Statement of how the Bill concerns the County Government**

The Bill seeks to provide a framework for the identification of development projects in Wards within the County and the modalities for the allocation of resources for these projects. The Bill requires, inter alia, that such projects shall be within the functions of the County Government as set out under Part 2 of the Fourth Schedule of the Constitution of Kenya, 2010.

**Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution of Kenya, 2010**

The Bill is not a money Bill within the meaning of Article 114 of the Constitution and Section 21 of the County Governments Act, 2012.

Dated the.....,2019.

HON.MUCHIRI GODFREY MURITHI,

CHAIRPERSON, COMMITTEE ON FINANCE, BUDGET AND APPROPRIATION