MEMORANDUM TO THE SENATE ON THE COUNTY WARDS DEVELOPMENT EQUALIZATION FUND BILL

The International Budget Partnership Kenya would like to submit this memorandum in response to the call for views from the public on the County Wards Development Equalization Fund Bill, 2018.

Brief about the International Budget Partnership Kenya

We are non-governmental organization focused on improving Transparency, Accountability, Participation and Equity in Public Finance management in Kenya. We do this by working with partners in government, civil society and the media.

Summary

This memorandum is a summary of our analysis of the adherence of the bill to the principles of equity. The memorandum also draws lessons from two previous studies done by IBPK on existing intra-county resource distribution mechanisms in 5 counties.
From this review we make several key observations:

i. The bill describes the objectives of their funds as enhancing equity among wards, but we find that the distribution criteria used is not equitable.
ii. The proposed size of the fund skew counties' development budgets toward single-ward projects and reduce their ability to budget for countywide or even regional projects.
iii. The bill does not create a link with existing equitable development laws in some counties.

Analysis

1. **Equity means that people have different needs and capabilities and they should be treated differently**. The County Wards Development Equalization Fund Bill proposes to establish a fund in each county to ensure there is equitable development across wards. The bill proposes to achieve this by distributing eight percent of revenue allocated to each county equally among wards in each county. Here we make the assumption that this means the revenue allocated to each county through the Equitable Revenue Sharing formula by the Commission on Revenue Allocation. The language in the bill does not make it clear whether it includes the own source revenue as well.

2. **The bill confuses the concepts of equality and equity**. Section 3 (d) of the bill gives equitable sharing of resources as one of its purposes. Then the bill goes ahead to suggest that the fund created in each county be shared equally among wards. This is contradictory and

goes against the principles of fairness in resource distribution.[1] Equal allocations can only be termed as equitable in cases where there are no relevant inequalities among the wards in a county, however, this is not the case as we argue in this memorandum.

3. **Treating wards equally may exacerbate existing inequalities**. Data from the Kenya National Bureau of Statistics and the Society for International Development show that there are very wide inequalities among wards.[2] The gaps are much wider than those among counties or constituencies. The data shows that the range of poverty rates across counties is four to one: the share of poor people in Turkana County (87.5 percent) is four times the share of poor people in Nairobi County (21.8 percent). As we move to the constituency level, the range increases to nine to one, and the ward with the highest share of poor people (Katilia Ward in Turkana County) has a poverty rate of 99 percent, 30 times that of the ward with the least share of poor people (Lower Savannah Ward in Nairobi), where the poverty rate is three percent. This shows that the discussion about marginalization and inequality in Kenya cannot be confined to the inter-county level but must consider what happens within counties as well.

4. **Intra-county inequalities remain wide even within richer and poorer counties**. Let us take an example the number of poor people in the richest and poorest counties in Kenya: Nairobi and Turkana counties (Table 1 and 2). In Nairobi County, Lower Savanna Ward is home to only 0.2 percent of the poor people in the county. Meanwhile, Lindi Ward has the highest proportion of poor residents at 3.5 percent. This means the number of poor people in Lindi is 23 times that of Lower Savanna. Therefore, it is hard to justify both wards receiving the same level of funds from an equalization fund.

5. **The inequalities among wards are also wide within poorer counties**. In Turkana County, Turkwel is the ward with the largest share of poor people making up 5.9 percent of all poor people in the county. Meanwhile, Lobokat Ward has a share of just 1 percent of the county's poor people. This means that Turkwel has 6 times the number of poor people in Lobokat. However, the bill proposes that both wards should be allocated the same amount of money to develop. Does that seem fair?

6. **Wide inequalities also exist among wards in access to key services at the county level**. One of the most capital-intensive sectors run by counties is the provision of water. We look at Mombasa and Narok counties to show the level of disparities in access to improved sources of water (Table 3 and 4). Mombasa county has one of the highest rate of access while Narok has one of the lowest. In Mombasa, Kipevu Ward has the highest number of people without access to water and they make up 6.8 percent of all people without water access in Mombasa. Meanwhile Mwakirunge Ward, which has the best access, has only 0.2 percent of people without access to improved sources of water. This means that Kipevu has 33 times the number of people without access as Mwakirunge. The inequalities exist even in counties where the average access is very low and that is the case in Narok. Kilgoris Central Ward has 3 times the number of people without access compared to Ololmasani Ward

[1] https://www.internationalbudget.org/wp-content/uploads/ibp-kenya-paper-principles-and-practices-in-public-resource-distribution-8-2016.pdf
[2] https://www.knbs.or.ke/download/exploring-kenya-inequality-national-report/

which has the best access in Narok county.

7. **Given large inequalities in poverty and access to services, equal shares of funding cannot be equitable.** Keeping the focus on access to water in Mombasa and Narok, we look at the per capita allocation to everyone without access to an improved source of water. In Mombasa, on average everyone would get Ksh. 2,335. However, the spread across the wards is very wide. The per capita allocation in Mwakirunge is Ksh. 37,981 which is 16 times the average. Meanwhile, in Kipevu the allocation is Ksh. 1,149. The same scenario plays out in Narok county where the allocation per person varies by a wide margin between the ward with the highest number without access to water and the lowest.

8. **Allocating eight percent of the equitable share of revenue to the fund has different effects across counties**. Due to differences in need and size of local budgets, taking eight percent of the budget will have different effects in different counties. For example, the actual development expenditure for Taita Taveta county in 2016/17 was Ksh.406 million. Eight percent of the equitable revenue share to Taita Taveta County was Ksh. 286 million. This was equal to 70 percent of total development expenditure in the county as shown in Table 6. In Makueni county, the ratio would only be 13 percent of the county's development expenditure. Therefore, the discretion left to county governments under this bill on capital budgets varies from county to county. The larger the proportion, the more the resource to single ward projects and less for projects whose benefits go beyond ward boundaries. County governments with smaller budgets such as Taita Taveta, Tharaka Nithi, Vihiga and Lamu will have a larger proportion of their development budget taken up by the fund. Over 35 percent of the development budgets in these four counties would be under the fund. This may limit the power of counties to budget for development projects that go beyond priorities of one ward. This has been one key lesson in some of the counties that already have equitable development laws.

9. **What is the basis of allocating eight percent of the allocated revenue to the fund?** The bill does not give any explanation on why eight percent is the right proportion in all the counties. The Senate should seek for justification on this percentage.

10. **Counties are at different levels of Capital Development and it is not fair to make them commit similar percentages for their budgets.** The brick and mortar approach to development is worrying as it has seen the putting up of many capital projects that are not planned with matching recurrent costs such as personnel, operations and maintenance. This could lead to unutilized projects as has happened with other capital only funds. The bill fails to make this critical connection. Further the assumption of need for capital development into perpetuity needs to be cured. Can the bill expound further on the conditions upon which the counties should implement the bill?

11. **Some counties already have equitable development laws in place to ensure there is equitable distribution of resources among wards**. In the first five years of devolution several counties developed laws aimed at addressing inequalities among their wards as shown in Table 5. Our analysis of emerging practices in the counties show that most approaches

being taken do make some effort to be equitable, but they generally fall short[3][4]. Counties like Elgeyo Marakwet, West Pokot and Meru among others have such laws in place. While the counties may not have perfect laws in equitable distribution terms, they have made county-specific efforts that the Senate with the help of Commission of Revenue Allocation should help improve.

12. **Despite their flaws, existing mechanisms in counties are more equitable than the one proposed in the bill**. Most of the current mechanisms used in some counties have high equal components but there are certain equitable components as well. For example, in Elgeyo-Marakwet the Equitable Development Act distributes 60 percent of its development budget equally but the remaining 40 percent is distributed based on measures of need such as population across wards, land area, arid and semi-arid regions in the county and so on. Therefore, the distribution criteria proposed in this bill will actually introduce a less equitable criteria in areas that some counties are already making some positive steps.

13. **The bill does not link with the County Integrated Development Plan or any other county plans**. Without making a clear link with county plans the bill creates a parallel process for the identification and selection of development projects creating extra logistical processes. If the assumption is that projects within CIDP are generated by the public then the link should be made to save costs on a parallel process.

Signed on this date: 18 April 2018

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Summary and Conclusion

In Summary:
The bill describes the objectives of their funds as enhancing equity among wards, but we find that the distribution criteria used is not equitable.

The proposed size of the fund skew counties' development budgets toward single-ward projects and reduce their ability to budget for countywide or even regional projects.

The bill does not create a link with existing equitable development laws in some counties.

In Conclusion
A key tenet of devolution in Kenya is to enhance subsidiarity meaning that decisions and functions should be carried out at the level that is most appropriate. A second one is Fiscal Accountability where the government should provide services to the citizens it collects taxes from.

In so saying we have argued in our memorandum that we fear that those two principles are being

[3] https://www.internationalbudget.org/wp-content/uploads/ibp-kenya-paper-sharing-public-resources-within-counties-8-2016.pdf
[4] https://www.internationalbudget.org/wp-content/uploads/kenya-revenue-sharing-mechanisms-and-intra-county-inequalities-ibp-2018.pdf

negated through this proposed County Ward Fund bill. It is not feasible to create a national law that dictates how each county should allocate its resources internally. For each county is unique. Why not let the County Assemblies develop their own unique laws and enforce them. And we have examples in Makueni, Elgeyo Marakwet, "Meru",

We cannot treat different problems similarly and expect to solve them. By treating unequal problems equally, we are exacerbating inequality that is against the word and spirit of our constitution.

Further, the bill proposes other structures which only increases the wage bill. You will recall that when we stood here on the Division of Revenue we expressed our concern on the shrinking allocation to counties.

What we think is feasible is to provide a framework for equitable distribution within counties that considers different measures of need within across the wards and even villages. The leave the specifics to the respective counties. Since some counties have and some more are already developing such frameworks, then this law should provide a broader framework for that. Some of this can borrow from the data that the CRA is using of ward level inequalities.