

THE EQUITTABLE DEVELOPMENT (AMENDMENT) BILL, 2017

A Bill for

**An ACT of the County Assembly of Elgeyo/Marakwet to amend
the Elgeyo/Marakwet County Equitable Development Act 2014**

A Submission of Kerio Center

Summary of Key Highlights of Kerio Center's Proposal

Brief outline of the proposed amendments, February 6, 2017

Kerio Center would like to participate in the ongoing process to amend the Equitable Development Act 2015. The proposed amendments emerge from in-depth interactions with the law over the last three years. We have also assessed the provision of resources for countywide projects, and engaged members of the public in deliberation of how they would like the law to be amended. These are attached as annexes to the submission.

We sincerely appreciate the efforts of the county government of Elgeyo Marakwet in providing leadership in resource distribution and its attempts to improve the law. We would like to submit our views on possible amendments that we believe could strengthen the law.

The proposed amendments addresses three crucial areas that aim at streamlining the development agenda in Elgeyo Marakwet as follows: to simplify the formula to facilitate public understanding and increase its legitimacy among stakeholders; to foster coordinated development among county units i.e. wards, sub-counties and county level development plan; to assess viability of projects in terms of expanding the county's revenue base while on the other hand delivering service to public – this is intended to ensure that wards get more money in the long-term by strategically investing in development.

Promoting coordinated development across government units through effective law

The proposed amendments intends to shift the development approach from focus on distribution of list of projects across wards to strategic development decision making processes that enables linkage between development at the wards and countywide. For example while ward residents have the discretion to identify and allocate money to projects of their choices, as currently provided for in the law, there is no guidance provided to the residents to ensure that projects selected have manageable implications for recurrent expenditure. Specially, amendments 9 & 10 for sections (11) and (15) respectively intends to encourage a well-thought out project selection process that focuses on the potential outcome of the project at an early stage.

Expanding the county's revenue based through sound development investments

It is true that every ward should get sufficient resources for development; however, it is also true that, resources are scarce. There is no one way to address this complexity. Clearly, one priority should be to invest in projects that generate more resources locally to enhance the existing resource capacity so there is more to share. Our proposed amendments in sections (5) and (6), and section (15) recommends that there is need to balance between the county's service and development needs investments with strategic interventions that enhance resource capacity.

Simplify the Equitable Development Act formula to make it more efficient and legitimate

We propose amendments to the EDA formula to make it simple and easy to be understood by stakeholders. In revising the formula, we propose that 50 percent of the development budget flow to wards, while 50 percent be retained for countywide (flagship) projects, and special programs for ASAL and urban areas. Amendments to section (5) is amended in order for the act to address unique development challenges across wards rather than sharing large share of the development budget across wards that have varying development needs. This is discussed in details in tables below.

Table 1: The EDA formula: comparing current and proposed factors and weights

Factor	Current Weight (%)	Proposed weight (%)	Change (%)	Remarks for amendments
Equal share	60	15	-45	To address unique development needs across wards, we propose reduction of the equal share to strengthen the equitable share and ensure adequate funding for countywide projects.
Population	15.2	20	4.8	Population factor is a proxy measure of needs; in the absence of more precise means of measurement, we are therefore proposing an increase in its weight in efforts to meet population needs.
Flagship projects	9.2	30	20.8	We propose to change the term “flagship” to “countywide” projects. We then propose an increase of 20.8% to 30% of the total development budget to the factor as amended. The main reasons for this increase is intended to empower the county to grow its local revenue base through more impactful projects and eventually increase the funding distributed to wards in the long-term.
Poverty index	8.8	8	-0.8	We propose a slight change for this factor, rounding it down to 8 percent.
Land area	3.2	6	2.8	Differences in land area across wards affect cost of delivering services. Considering county’s topography and land differences, we propose an increase of 2.8 percent.
ASAL	2	12	10	We propose that the allocation to ASAL should not be distributed through the formula and instead be treated as a time-bound grant.
Fiscal responsibility	0.8	1	0.2	We propose a slight increase to the weight of this factor, a change of the term “fiscal responsibility” to “Public Participation Effort”, and means of measurement.
Emergency factor	0.8	0	-0.8	Ideally, an emergency fund is recurrent in nature. We are therefore proposing removal of this factor from the EDA.
Urban development	0	8	8	Urban areas in the county contribute a large percentage of the county’s local revenue; however, wards hosting urban areas have been struggling to cater for their special needs.
Total	100	100	0	

We propose that the 50 percent of the formula be directed to three special programs: Countywide projects, ASAL and Urban area development. These will be channeled separately from the ward formula as shown in table 2 below;

Table 2: Special Programs

Factor	Proposed weight (%)	Remarks for amendments
Countywide projects	30	The county department will develop proposals to be funded from this factor, as per proposed new section (6) and in line with guidelines developed under section (15). These will then be subjected to public participation as per amended section (10)
ASAL	12	We propose a special program which is time-bound with a specific mandate and design to address specific issues that affect development in those wards under new sub-section (6). The special program will be designed as per new sub-section (6) (2) (b) to bring ASAL wards to the same level of development as the rest of the wards, after which the program shall be abolished based on the proposal under section (6) (2) (c).
Urban areas development	8	We propose a program to address Urban areas’ development needs in the county. Urban areas contribute a larger share to the local revenue base, but wards hosting these urban areas have been struggling to cater for its needs.
Total	50	Overall, we propose that 50% of the development budget be allocated to special programs that have specific purpose as per section (6) while the other 50% is allocated to wards projects as per section (5).

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Proposed by Kerio Center as follows –

S/No.	Proposed amendment	Section	Remarks
1	Amend the short title by deleting the words “realization of equal and” and by replacing it the word “mechanism for” immediately after the words “provide the”, and by deleting the words “allocation: and replacing it with the word “distribution” immediately before the word “of resources” and deleting the words “within words” and replacing with the words “across the county” and deleting the words “giving them powers” and replacing it with the words “describing their” immediately before the words “functions and responsibilities”	Short title	The short title should, through spirit and letter, and intentions promote equitable distribution of resources. It therefore should not emphasize on equal allocations rather than facilitating the realization of equity and fairness.
1	Amend this section by including interpretation of the following as specified for in section 10: Amend section by inserting interpretation of the word “People” has the same meaning has the term “public” given in the Public Finance Management Act “Public Benefits Organizations” has the same meaning given by the Public Benefits Organizations Act 2013 “Communities” means the people, either acting as individual members or collectively as organized interest groups	Section 2	These terms are mentioned section 10, (now amended) but no interpretation is given to the terms in the interpretation section.
2	Amend section 3 by deleting sub-section (a). Amend sub-section (3) (b), now new sub-section (a) by deleting the words “create” and replacing it with the words “facilitate” immediately before the words “equitable” and inserting the words “distribution of” immediately before the words “development”, and inserting the words “budget” immediately before the words “among all wards” Amend sub-section (3) (c), now new sub-section (b) by inserting the words “transparent and” immediately before the words “enhance” and by revising the word	Section 3	The law, as amended should put emphasis on promoting equity and therefore the objects should explicitly specify that as the main object. Notwithstanding the provision of equal share of the total development budget, it is still within the principles of equity and fairness, but should not be

	<p>“accountability” to “accountable” and, by inserting the words “management of development resources in the county;” immediately after the words “mechanisms”</p> <p>Amend sub-section (3) (d), now new sub-section (3)(c) by deleting the word “ensure” and replacing it the word “facilitate” immediately before the word “direct” and by deleting the word “public” immediately after the word “continuous”, and by inserting the word “of people” immediately before the words “in project identification” and by inserting “and” immediately after the word “implementation”</p>		<p>emphasized.</p> <p>The law is not “creating” equitable development but, rather, it provides for the process and formula for which equitable distribution of development budget is based on.</p>
3	<p>Amend the title of part II by:</p> <p>a) deleting the word “equal”</p>		<p>Just as the remarks in the previous section, the amendments of the law should put emphasis on equity both in spirit and letter, but also intentions.</p>
4	<p>Amend section (4 by) deleting the whole section.</p>	Section 4	<p>The term “minimum development requirements for each ward” is not clear understood and does not link to any section of the law as currently provided for in the law.</p> <p>In this case, the understanding of this part of the law assumes that, the Ward Development Committees have the requisite capacity to determine the wards development needs after which the committee will advise the executive. This confuses the whole processes by which ward projects are identified and funded through the ADP processes in August every year.</p> <p>The section also assumes that, the executive has a blank cheque that, after the advice of the WDC in</p>

			regards to the minimum development needs of each ward, the executive would then provide the necessary funding required for those development needs to be met meeting the cost which is not the case.
5	<p>Amend part II by deleting section (6).</p> <p>Amend section (5) by deleting the word “equal” and replacing it with “equitable”.</p> <p>Amend section (5) by inserting the following new sub-sections before sub-section (1) which shall be new sub-section (1) –</p> <p>(1) the accounting officer of the county entity in charge of Finance and Economic Planning shall allocate fifty percent (50%) of the total development budget to ward projects based on pre-determined formula specified sub-section (2)</p> <p>(a) the accounting officer of the county entity in charge of Finance and Economic Planning shall provide guidelines to specify the share of the total development budget appropriated to a county entity to be allocated to ward projects.</p> <p>(b) the guidelines under sub-section (1) (b) shall require county entities in charge of development projects to, in line with guidelines required under section (15) (1), demonstrate future operational expenditure commitments resulting from ward development projects within sixty (60) days before the Annual Development Plan in August every year.</p> <p>(2) the accounting officer of the county entity in charge of Finance and Economic Planning shall allocate the remaining fifty percent (50%) of the total development budget to special programs which shall be administered as per a pre-determined formula provided for under new section (6).</p> <p>Amend sub-section (1), now new section (3) by deleting the words “ county chief officer” immediately before the words “ Each” and replacing it with “accounting officer of a county entity”</p> <p>Amend sub-section (1), now new section (3) by</p>	<p>Part II of the act</p> <p>Section (5)</p> <p>Section (6)</p>	<p>To make the act and particularly the formula simple and easy to be understood, the act should be amended to use single set of factors i.e. equitable and equal shares should not be separate which, equitable factor is later segregated into another set of factors. We therefore propose deletion of section (6) and expanding section (5) to include equal share, population, land area, ASAL and so forth, listed as single set of factors.</p> <p>The law should be revised to be consistent with others laws in usage of common terms. For example, while the constitution and subsequently, the PFM Act 2012 refer to the chief officer of a county department as the accounting officer consistently, the EDA act refers to the same officer as chief officer.</p> <p>The use of the term “department” is limited to sub-sectors only whereas the county can have other operational units. Together these can be referred to as entities. Again this part should be revised to align to the PFM Act 2012.</p> <p>Public participation is one of</p>

	<p>deleting the word “department” immediately before the word “ for development” and replacing it with “a county entity”</p> <p>Amend sub-section (1), new sub-section (3) by inserting the words “on the basis of basic minimum” immediately after the words “in the county”</p> <p>Amend sub-section (1), now new section (3) by deleting the numerical “sixty percent (60 %)” immediately after the word per cent” and replacing it with numerical “fifteen percent 15%”.</p> <p>Amend section (5) by inserting the following new sub-sections after sub-section (1), now new sub-section (3) –</p> <p>(4) each accounting officer of county entity shall ensure that twenty percent (20%) of the ward projects share of the total development funds appropriated to the county entity is shared based on population</p> <p>(5) each accounting officer of county entity shall ensure that eight percent (8%) of the ward projects share of the total development funds appropriated to a county entity is shared based on poverty index</p> <p>(6) each accounting officer of county entity shall ensure that six percent (6%) of the ward projects share of the total development funds appropriated to a county entity is shared based on land area</p> <p>(7) each accounting officer of county entity shall ensure that one percent (1%) of the ward projects share of the total development funds appropriated to a county entity is shared based on public participation effort.</p> <p>Amend sub-section (3), now new sub-section (9) by inserting the “by” immediately after the words “be approved”</p>		<p>crucial elements of the act, however, the law does measure and reward good practices as an incentive to encourage implementation of the law (strategic enforcement). We are therefore proposing for a change of the term “fiscal responsibility” to “Public Participation Effort” and subsequently, proposing basis for measurement.</p>
6	<p>Amend part II of the act by inserting new section (6) title as below;</p> <p>“operationalization of special programs factor as per section (5) (1)–“</p> <p>Amend section the act by inserting new sub-sections to section (6) as follows;</p>	Part II of the act	<p>Operationalizing the new factor.</p> <p>Our proposal is that, the countywide projects, ASAL and Urban areas development should not be distributed to wards, and instead be treated as special</p>

<p>(1) the accounting officer of the county entity in charge of Finance and Economic Planning shall develop a proposal for the establishment of the following special programs;</p> <p>(a) an Urban areas development program</p> <p>(b) an Arid and Semi-Arid development program.</p> <p>(2) the accounting officer of the county entity in charge of Finance and Economic Planning shall submit the proposals listed in sub-section (1) (a) and (b) to the County Assembly for approval within 90 days of coming to effect of the amended act.</p> <p>(a) the proposals specified in sub-section (2) shall specify the needs to be addressed by the respective special programs, baselines surveys on the needs to be addressed, and means of measuring progress overtime.</p> <p>(b) specifically, in the case of Arid and Semi-Arid area factor, the proposals specified in sub-section (2) shall focus on eradicating poverty in ASAL areas by bridging the development gap between ASAL and non-ASAL wards.</p> <p>(c) in regards to section (1) (b), the proposals shall specify timeframes from which the program targets shall have been achieved, means of program review and exit plan.</p> <p>(d) the exit plan specified under sub-section (2) (c) shall specify the manner in which the funds released from abolishment of the ASAL special program, upon meeting its objective shall be distributed through the formula.</p> <p>(3) the accounting officer of the county entity in charge of Finance and Economic Planning shall ensure that; the following pre-determined criteria shall be used to distribute funds to factors under the special program; –</p> <p>(a) 30% of total development budget shall be allocated to countywide projects.</p> <p>(b) 12% of the total development budget shall be allocated to Arid and Semi-Arid program</p>	<p>programs with the intention of addressing specific challenges which are unique.</p> <p>ASAL factor program shall be review after a set period of time. The proposal, whose formulation shall be informed by baseline surveys to establish the development and service access difference between ASAL and non-ASAL wards, shall set targets of progress to be made in bridging the development gap. The targets shall be reasonably set based on available funding to the program on annual basis and timeframe for which the targets shall be achieved is set, and if reasonable progress will have been made to bring the ASAL areas at bar with the rest of the wards at the end of the set period, the program is abolished and the amount allocated to the program shall be distributed through other factors as may emerge and determined.</p>
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	<p>(c) 8% of the total development budget shall be allocated to Urban areas development program.</p> <p>(4) the accounting officer of the county entity in charge of Finance and Economic Planning, through the guidelines specified in section 15 of this act, shall provide guidelines to specify the criteria to which county entities shall bid for the funds under sub-section (3) (a).</p> <p>(a) the criteria required in section (4) shall demonstrate the countywide projects' contribution to local revenue growth, improved accesses to services and linkage to development at the ward.</p>		
7	<p>Amend section (7) by deleting the words “absorption on development funds” immediately after the words “reports on” and replacing it with “budget implementation”</p> <p>Amend sub-section (1) by deleting the words (county officers” and replacing it with “accounting officers of county entities” and by inserting the words “budget implementation” immediately after the word “quarterly, and deleting the words “development funds” and replacing it with “budget” immediately after the words “absorption of” and deleting the words “reports which shall be” immediately before the words “in accordance”</p> <p>Amend section (7) by inserting a new sub-section as follows;</p> <p>(2) within the same time of submission of the budget implementation reports to County Assembly as required by sub-section (1), the accounting officer in charge of Finance and Economic Planning shall publish and publicize the quarterly implementation reports in the county website and in any other avenues that promote public access to the reports.</p> <p>Amend sub-section (4), now subsection (5) by inserting the words “from the County Assembly’s review” immediately after the words “findings” , and adding letter “s” to the word “report”, and by deleting the words “made available to any Member of the public upon request” immediately after the words “shall be” and by replacing it with the words “published and publicized in the County Assembly website within two days of production”</p>	Section 7	<p>In this section the law limits the reports to development expenditure whereas in section 3 (c), the law speaks to accountability mechanisms in development, which we believe is the primary role for reporting, and is not limited to development only but the entire budget i.e. recurrent and development expenditure because development is not just limited projects but also operations.</p> <p>The law should facilitate access to information by making it available as first line of access after which member of the public is then facilitated to access any additional information as complementary means of access.</p>

<p>8</p>	<p>Amend section (10) (1) of the act by deleting the word “County officers” immediately before the words “shall promote” and by replacing it with the words “County Office of Public Participation as created under part II of the Public participation Act 2014, section (5)” and by deleting the words “promote and sustain public participation and to that effect shall involve the” and replace it with the words “ensure that” immediately before the words “communities” and inserting the “public benefits” immediately before the words “organizations” and by inserting the words “government decision relating to” immediately before the words “development project” and by deleting the words “decision making” and replacing it with the words “the” immediately after the words “process” and by deleting the words “of the project or activity and replacing it with the words “to which the decisions are made”</p> <p>Amend section (10) by inserting a new sub-sections (3) immediately after sub-section (2) (c) and before section (3), now new sub-section (4) as below;</p> <p>(3) Specifically, the county treasury shall, while developing the guidelines required in section (15), require all county entities to formulate budget proposals to be funded under special program factor in form of budgetary proposals.</p> <p>(a) the budget proposals under sub-section (3) shall be subjected to public participation as maybe determined appropriate by the guidelines developed by the county treasury under section (15) (1).</p> <p>(b) the consultations between the public and executive on the budget proposals as specified in sub-section (a) should be based on reasons and justifications on how the proposed projects will, among others: improve public services and enhance revenue base of the county.</p> <p>(c) the budget proposals under sub-section (3) shall be published in the county website at the least seven (7) days before the first day of public participation on the budgetary proposals to allow the public to interact with the proposals in advance.</p> <p>Amend sub-section (3), now new sub-section (4) by deleting the words “Development Committee” immediately after the words “by the” and replacing it</p>	<p>Section 10, as it is now, in generality does not place the responsibility of promoting and sustaining public participation on any entity of the county government. The term “officer” as used could mean any officer serving in any entity. This does not specify basis for accountability on how public participation is conducted.</p> <p>We view that the office of public participation, as established under the Public Participation Act 2014 should be responsible for the conduct and implementation of the provisions and public participation laws in the county. as per proposed amendments to section (10)</p> <p>In order to promote effective public participation, members of the public should be able to access the subject for discussion in advance for them to prepare. The proposals should also provide reasons and justification for such proposals. This will form the basis for deliberation. We therefore propose amending this section to provide for publishing and publication of the budget proposals for the public to access in advance.</p> <p>In terms of amendments to section (3), now section (4), we propose that, in order to respect the separation of powers, the process by which executive budget priorities are tabled for approval by the assembly, including the process by</p>
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	<p>with the words “officer representing the county entity or entities seeking views from the public” and by deleting the words “and sent to the relevant Member of the County Assembly and the committee of the assembly concerned, and replacing it with “ indicating how the views were used to arrive at the decision submitted or to be submitted to County Assembly for approval”</p>		<p>which the proposals were formulated should be as clear as possible and avoid any ambiguity.</p>
<p>9</p>	<p>Amend section 11 by inserting a new sub-section immediately before sub-section (1) as below;</p> <p>(1) the County Executive Member for an entity responsible for implementing a development project shall within 90 days after Annual Development Planning (ADP) public participation in August every year, conduct feasibility study, baseline surveys – whichever is necessary for proper implementation of the project, and submit such reports to the County Assembly for approval.</p> <p>(a) if any of the studies done, negatively affects project or projects decided by the public at a ward public participation during the ADP, the County Executive Member for an entity in which the affected project falls under, shall within 30 days after submitting the study report to the County Assembly, convene a public participation forum in the ward or wards whose project or projects have been affected to allow the public to identify another viable project.</p> <p>(b) if any of the studies done, negatively affects a countywide project or projects under special programs, the County Executive Member for an entity in which the affected project falls under, shall within 30 days after submitting the study report to the County Assembly, identify another viable project, and convene a public participation forum to allow the public to deliberate and endorse such project before submitting it to assembly for approval.</p> <p>(2) the report under sub-section (1) shall provide: details of viability of the project, projected outcome, including baseline from which such outcome will be measured if successfully implemented; possible risks and challenges, and risk assessment, and verdict of that assessment.</p> <p>Amend sub-section (1), now sub-section (3) by inserting the words “for a county entity” immediately after the word “Member”, and by deleting the letter</p>		<p>Public Benefits Organizations (PBO)</p> <p>In order to ensure the county investments, including ward and countywide projects are sound and viable, the county should conduct feasibility, establish baselines before commencing implementation.</p>

	<p>“a” immediately after the words “for” and by inserting the words “implementing” immediately after the words “development projects”</p> <p>Amend sub-section (2), now new sub-section (4) by inserting the words “or the county in the case of countywide projects” immediately after the words “carried on”.</p> <p>Amend section (11) by deleting sub-section (3), now new sub-section (4), and by replacing it with the a new sub-section as below;</p> <p>(4) At the end of every quarter, the County Executive Member in charge for a county entity responsible for implementing a development project shall; -</p> <p>(a) in coordination with Ward Development Committee (WDC) convene a ward open forum where the County Executive Member shall provide quarterly updates of the budget implementation, with focus on projects of the specific ward to which the open forum is held, and allow the public to submit and receive feedback on their questions.</p> <p>(b) in collaboration with interested Public Benefits Organizations (PBOs) operating in the county, convene countywide quarterly open forums where the County Executive Member in charge of an entity shall provide quarterly updates on budget implementation.</p> <p>(c) the 4th quarterly open forums shall include a summary update of the whole financial year and shall serve as annual open forums for both specific wards and countywide forums.</p> <p>Amend section (11) by inserting a new sub-section as below;</p> <p>(5) the updates under sub-section (4) shall include progress made to achieve the targets of the quarter in the case of quarterly open forum and annual targets in the case of 4th quarter open forum, any deviation from targets and plans to address any emerging challenges going forward.</p>		
10	Amend section (12) by deleting the “county chief officers” and by replacing it with words “accounting officers of county entities”	Section 12	Amend sections and sub-sections with the words “county chief officer and replace it with accounting officers of county entities,

			including sections 13 (1) and (2)
11	<p>Amend section 14 (1) by inserting the words “In case a ward resident or group of residents finds the information provided for in the implementation reports published and publicized under section (7) inadequate,” immediately before the words “Any resident” and by inserting the words “seek audience from” immediately before the words “Development Committee” and by deleting the words “through the” immediately before the words “Development Committee” and by, deleting the words “seek to have” and by replacing it with the words “to get” immediately before the words “more information about the project”</p> <p>Amend sub-section (2) by inserting the words “sufficient or not” immediately after the word “is not”, and by deleting the words “county chief officer and replacing it with the words “accounting officer of the county entity, in which the project is implemented” immediately before the words “for more information”</p> <p>Amend sub-section (3) by inserting a new sub-section (a) as below</p> <p>(a) The Development Committee shall within seven (7) days of receiving such petition, have it submitted and received in the accounting officer of a county entity responsible for such project, and copy submitted to the county assembly.</p>	Section 14	In line amendment 7 above, we propose amendments to section (14) to avoid the WDC being gatekeepers to the public while seeking information. However the WDC can be the primary contact of the public at the wards, the committee should not be the means through which, when a citizens are not satisfied with information provided by the committee. There should be a provision to empower citizens to audience directly with the accounting officers, CEC and county assembly in any case.
12	<p>Amend section 15 (1) by deleting the words “the implementation of principle of equalization and equality under this act, to accounting officer in charge of projects” immediately after the word “relating to the” and by replacing it with the words “development and policy direction of the county government in the coming year and over the medium-term to all county entities consisting of a criteria that each entity’s development plans shall adhere to as per section 128 of the Public Finance Management Act 2012”</p> <p>Amend section (15) by inserting a new sub-section as below;</p> <p>(2) the guidelines provided under sub-section (1) shall include the criteria followed by each ward in identifying its development projects in efforts to ensure coordinated development plan between</p>	Section 15	To provide for coordinated development framework across various units of the county, section (15) is amendment to provides various guidelines including for policy direction, measure public participation effort factor etc

countywide and ward projects, and also, development across wards.

Amend sub-section (2), now new sub-section (3) by deleting the words “be formulated as a proposal in Budget of the financial year and adopted by the County Assembly during the budgetary processes of that financial year” immediately after the word “shall” and by replacing it with the words “include all criteria required of the county government entity in charge of Finance and Economic planning by this act and shall be tabled in the County Assembly for approval, and subsequently, published and publicized for public access and consumption”

Amend section (15) by inserting a new sub-section (4) as below;

(4)The county treasury, shall in accordance with section 105 of the Public Finance Act, issue guidelines relating to measurement of Public Participation Effort factor under sub-section (6) of section (5) of this Act, and submit them to the County Assembly for approval.

(a) the guidelines provided under sub-section (4) shall specify the parameters to be used, frequency and basis for measurement.

(b) the parameters, frequency and basis required of the county treasury under section (4) (a) shall focus on conduct of public participation fora in each ward in terms of: -

(i) how the proposals from the public are distributed equitably across the ward;

(ii) how the projects coordinate with development plans at county level and in other wards

(iii) how the projects selected address policy guidelines issued by the county entity in charge of Finance and Economic planning.

(iv) how the public participation forums were organized in terms of issuing notices, access to venues, access to subject matter prior to forum and documentation of views.

(c) the assessment results shall be published in the

	county website within ninety (90) days before next round of development resource distribution.		
13	Amend section (16) by deleting sub-section (1) (b) Amend section (16) by deleting the words “things” immediately before the words “all other” and by deleting the words “by a body corporate” and by inserting the words “ in accordance with section 18” immediately before the words “for the proper”		
14	We support the assembly proposed amendment to section 17 of the act which is: Amend section (17) (1) by deleting sub-section (1) (a)	Section 17	As amended by assembly
15	Amend section 18 (1) (a) by inserting the words “in consultation with the county executive” immediately before the words “coordinate development” Amend section 18 (1) (a) deleting sub-section (h)	Section 18	The accounting of public funds appropriated to a county entity is the responsibility of the entity’s accounting officer, and therefore, sub-section (h), which gives unconstitutional powers and mandate to the Ward Development Committee is amended by deleting.
16	Amend the act by deleting whole of part IV, section 19	Section 19	The proposed amendment is in line with amendment of section 18 above. The provision of the law to empower WDC to manage funds violate several provisions of the constitution and subsequently, the PFM act 2012 on several grounds; 1) It violates article 226 of the constitution and section 148 pf the PFM act 2012 which both require that each entity of a county government should have an accounting officer and not “accounting officers” as created by section 19 of the act which, by giving the WDC financial responsibilities, creates 20 additional accounting units. 2) While the constitution is

			<p>not explicit on the number of accounting units as only one, the fact that sub-article 2 of the article 226 requires of the accounting officer to be accountable to the County Assembly is sufficient to render the law unconstitutional on grounds that, its provisions surpasses the constitutionally recognized mandate of the County Executive Member of each entity to ensure that the entity has an accounting officer by establishing the ward units with financial responsibility.</p> <p>3) It is not entirely unconstitutional to create additional accounting units, however, it should not be a requirement of the county law and instead, if the accounting officer of the county entity, in consultation with the County Executive Member in charge of the entity feels that, they need subordinate accounting units, it should be on their own prerogative to do so, as long as the responsibility of accounting for funds appropriated to the entity is the responsibility of the accounting officer of the county entity and not the units created by the entity.</p>
17	<p>Amend section 21 (2) (b) by deleting the words “department” immediately after the word “relevant” and replacing it with the word “county entity”</p> <p>Amend section (21) (2) (c) by inserting the words “from a relevant county entity and,” immediately after the word “receive” and by inserting the words “funds for specified project(s)” immediately after the words “, manage” and by inserting the words “in line with guidelines provided by the relevant entity,”</p>	Section 21	Amend the section to empower the Project Management Committees to, together with the WDCs as per the proposed amendments, provide support and to facilitate executive to deliver on its mandate, and no to include financial management

	<p>immediately after the words “and control” deleting the words “funds allocated” and by replacing it the words “processes” and be deleting the words “subject to approval by Ward Development Committee;”</p> <p>Amend section (21) (2) in line with proposed amendments to sections 18 above, and 19, 23 and 24 below</p>		responsibility to the committee functions.
18	Amend section (22) (c) by deleting the words “non-governmental” and replacing it with the words “public benefits organizations”	Section 22	The term NGO is limited, and locks out community-based organizations, self-help groups and such other non-state actors.
19	Amend the law by deleting sections 23 and 24	Sections 23 and 24	As per the proposed amendments 12 and 13 for sections 18 and 19.
20	Amend section 25 (1) by inserting the words “and voluntary” immediately after the words “part-time”, and deleting the words “only” and by replacing it with the words “shall not” immediately before the words “be entitled to allowances” and by inserting the words “, however in any case the relevant county executive member, on their own determination and with reasonable justification find it fit for the Development Committee to be awarded any allowances, such allowance shall be temporary, and” immediately before the words “at a rate” and by deleting the words “Executive Committee Member responsible for finance and economic planning in consultation with” immediately after the words “fixed by the” and by deleting the words “treasury and the Executive Committee Member responsible for finance”	Section 25	<p>Currently, the provisions of the act that create the WDC have not been implemented, however, the recurrent expenditure, to which the remuneration of the WDC members shall be drawn, is already above the threshold required by the PFMA which is required not to exceed 60% of the total budget. So, operationalizing the provisions that create the WDC committees as they are, adds to the recurrent burden and instead, efforts should be put to sustain the recurrent expenditure to free more money for development projects.</p> <p>Subsequently, the implication of adding to the recurrent expenditure by implementing the relevant provisions of the law strains the executive to further deviate away from the provisions of sub-section (2) of section (4).</p> <p>Finally, to sustain community involvement in management of public finances, integrity and</p>

			commitment of the committee members to ensure that the public gets value for money should not be driven by monetary gain rather than, by selflessness to serve the community.
21	Amend part V to be new part IV	Part V	Amended to be new part IV
22	<p>Amend section 26 (1) (b) by adding the words “Finance and” immediately before the word “Economic planning” and by deleting the words “Deputy Chairperson” and replacing it with the words “committee secretary”</p> <p>Amend section 26 (c) by deleting the words “finance” and replacing it with the words “administration” and by inserting the words “ who shall be the committee Deputy Chairperson”</p> <p>Amend the amended section (26) by exchanging sub-section (b) and (c) to have sub-section (c) come before sub-section (b).</p> <p>Amend section 26 (d) by deleting the words “County Executive Committee Member responsible for special interest groups” and replacing it with the words “ Accounting officers for county entities in charge of; Finance, Planning, and Administration who shall be committee members”</p> <p>Amend section 26 (1) by inserting a new sub-section as below;</p> <p>(e) the directors of planning, finance, and administration who shall be committee members</p> <p>Amend section (26) (2) by deleting the word “be” and by replacing it with the words “shall serve as” immediately before the words “executive consulting organ”</p>	Section 26	<p>The current structure and mostly, the ideal structure in many counties at the moment have the “finance and planning units under a single County Executive Member, but with different Accounting Officers (chief officers).</p> <p>Similarly, the county and, many counties do not have entities responsible for “interest groups” or at least, it is not clear what the law meant by this term.</p> <p>In addition, the county administration should be part of the committee to oversee the implementation of the act by virtue of the entity providing support to all county entities just Finance and Planning does, though administratively.</p> <p>Lastly, to determine the progress made in implementing the law from technical perspective, the Accounting officers and directors for the selected units should be part of the membership of the committee to provide technical support to the committee in assessing implementation progress</p>
23	Amend the schedule section by inserting the words “First Schedule” immediately after the word (title) “schedule”.	Schedule section	The schedule section does provide for second schedule, but do not provide for first

			schedule
24	Amend, the now “first schedule “ as amended to provide for consultation between the Executive and Ward Development Committee in coordinating ward activities as opposed creating autonomous Ward Development Committee as it now stands.	Schedule one	This is in line with proposed amendments to section 18, and subsequently, sections 19, 21 and 23
25	Amend second schedule section as proposed in annex 1 to this document	Schedule section	This section is too narrowed to only ward projects whereas the law addresses the total development budget which includes funding for countywide projects. It therefore lacks the reporting template for countywide (flagship) projects. It also uses village, a unit which has not been established yet. We are proposing revisions to the reporting template as below

