SPECIAL ISSUE

Kenya Gazette Supplement No. 4 (Bomet County Bills No. 3)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

BOMET COUNTY BILLS, 2019

NAIROBI, 18th February, 2019

CONTENT

Bill for Introduction into the County Assembly of Bomet—

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

THE BOMET COUNTY EQUITABLE DEVELOPMENT BILL, 2019

ARRANGEMENT OF CLAUSES

Clause

THE BOMET COUNTY EQUITABLE DEVELOPMENT BILL, 2019

A Bill for

AN ACT of the County Assembly of Bomet to provide for the realization of equal and equitable allocation of resources for development projects within wards; to provide for the establishment of a ward development and project implementation committees giving them Powers, functions and responsibilities to deliver services and for connected purposes

ENACTED by the County Assembly of Bomet as follows—

PART I—PRELIMINARY

Short title and Commencement

1. This Act may be cited as the Bomet County Equitable Development Act, 2019 and shall come into operation upon publication in the *Gazette*.

Interpretation

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

"county chief officer" means any person appointed as such by the County Government under section 45 of the County Governments Act, 2012;

"county development funds" means funds appropriated by the County Assembly as development fund in any financial year;

"county flagship projects" means County projects as provided for in the County Integrated Development plan approved by the County Assembly;

"county government" means the County Government of Bomet;

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

"county treasury" means the county treasury as created under the Public Finance Management Act, 2012;

"development committee" means the Ward Development Committee established under section 16 of this Act;

"development plan" has the same meaning as provided for in the interpretation of the public finance management Act;

"executive committee member" means the County Executive Committee Member under the County Governments Act, 2012.

"financial year" means the period of twelve months ending on the thirtieth June in each year;

"fiscal plan" means the plan developed by the county government having met the requirements in the Constitution and the Public Finance Management Act;

"governor" means the Governor of Bomet County;

"ward" means the wards as created under the Constitution of Kenya, 2010.

Objects and Purpose

3. The Objects and Purpose of this Act is to—

(a) create equality in development projects in wards within the county;

(b) create equitable development among all the wards in the county;

(c) enhance accountability mechanisms in development related matters in the county;

(d) ensure direct, continuous public participation in project identification, prioritization, implementation and oversight of projects; and

(e) align development projects to the county integrated development plan.

PART II—EQUITABLE AND EQUAL DEVELOPMENT AND OPERATION MECHANISIM

Minimum development requirement for each Ward

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

(2) The County Executive Committee, in consultation with the County Assembly, shall ensure that at least forty percent (40%) of the total annual Budget is allocated for County Development, within three years after the coming into effect of this Act.

Equal allocation of development funds to wards

5. (1) Each County Chief Officer shall ensure that thirty percent (30%) of the funds appropriated to the department for development purposes are equally shared among the wards in the county.

(2) Where a development project is run by the County Government directly, the responsible Chief Officer shall ensure that wide consultations in identifying the project location are carried out and no funds of the County, grants, loans or donations may be spent on a unilateral decision of an arm of government.

(3) Any decision made by the responsible chief officer under subsection (2) shall be approved the County Assembly before any funds are spend in relation thereto.

(4) Where the recipient is the County Assembly, on behalf of the County Government, such money shall be appropriated in accordance with the ordinary budgetary process.

Equitable allocation of development funds to wards

6. (1) Each County Chief Officer shall ensure that at least seventy percent (70%) of the funds allocated to the department for development purposes are equitably shared among the wards.

(2) In sharing out the funds under subsection (1) above, the County Chief Officer shall use a pre-determined formula of consideration approved by the County Assembly.

(3). For avoidance of doubt, the following formula shall be used in coming up with the pre-determined sharing of the funds with appropriate modifications and considerations used, and in particular consideration shall be given to—

(a) population;

(b) county flagship projects;

(c) poverty index in the wards;

(d) land area; and

(e) semi-arid areas.

(4) Once approved by the County Assembly, the formula shall apply to all County Chief Officers in discharging their mandate.

(5). The Chief Officer responsible for Economic planning shall in consultation with the Chief Officer responsible for Finance jointly be responsible for updating county database on clause 6(3) of this Act. This data shall be—

(a) updated annually and

(b) submitted to the County Assembly not later than the 31st day of August every year

Reports on absorption of development funds

7. (1) All County Chief Officers must submit quarterly reports to the County Assembly on the absorption and non-absorption of development funds which reports shall be in accordance with the requirements of the Public Finance Management Act, 2012.

(2) All reports made under subsection (1) shall contain a statement of compliance with sections 5 and 6 of this Act and an annex to the report in the form provided in the Second Schedule.

(3) The County Assembly shall, upon receipt of any report under subsection (1), consider and debate on the report and may summon any person to appear before it as it may deem fit.

(4) The findings of the report shall be made available to any member of the public on request.

Public Procurement Act and Regulations to be observed

8. (1) In carrying out any development project or Activity, the Public Procurement and Disposals Act, 2005, the Public Procurement and Disposal Regulations of 2005, and any other law shall be followed and adhered to at all times and in particular—

(a) no contract tender may be awarded to any person or body that is not prequalified in the financial year;

(b) all contracts must be made public and criteria for award made clear;

(c) no member of the Executive, his or her close relation, or a company in which the member is a director may bid for a contract while the member is in office; and

(d) youth, women and persons with disability are to be given special consideration upon being recognized by the relevant authorities, and at least thirty percent (30%) of all County tenders shall be awarded to them in accordance with Legal Notice Number 114 of the Public Procurement and Disposal Regulations of 2013.

(2) Priority shall be given to eligible companies and registered groups in the ward where the tender is ward based.

Conflict of Interest

9. Where a person officially participating in any proposed project has any interest in a project in a personal capacity such person shall declare that interest at the inception stage of the project and shall not participate in the conduct of the matters of the project any further than is necessary for handing over the control of the project.

Public Participation

10. (1) County Chief Officers shall promote and sustain public participation and to that effect shall involve the communities, organizations and the people to be affected by any development project or activity in the county, Sub-County, Ward and all other units established under the County Government Act, in all stages of decision making process of the project or activity.

(2) Without prejudice to the generality of subsection (1) above, the communities, organizations and the people shall—

(a) before the commencement of any project, be involved in the development of a plan for their wards and the prioritization of projects;

(b) during the implementation of any project, be informed, through the Ward Development Committee, of the funds allocated to each project and the commencement and completion dates of the project; and

(c) at the completion of the project, be informed of the true value of the project and be allowed to submit opinions on the project in presence of the Executive Committee Member or the Chief Officer in the office through which the project is implemented.

(3) The views of the communities, organizations and the people shall be recorded in the minutes or memorandum of the meeting by the Development Committee and sent to the relevant member of the County Assembly and the Committee of the Assembly concerned.

Monitoring and Evaluation of projects

11. (1) The County Executive Committee Member responsible for a development project shall within ninety days of completion of a project, in conjunction with the Development Committee, report to the County Assembly on the impact assessments of the project in the ward.

(2) The report under subsection (1) shall contain all details as to how the project was implemented and its impact to the people of the ward in which the project was carried on.

(3). At the end of every financial year, each ward shall have a one day open forum where the Executive Committee Member shall report on all projects implemented in the ward in the financial year ending and the members of the public shall submit their questions, memoranda and petitions relating to the report and projects within sixty days after the end of the financial year.

Projects to align to county integrated development plan

12. County Executive Committee members shall ensure that all projects within the wards have been approved and are in the county development plan and all projects shall be guided, in their implementation, by the County Integrated Development Plan (CIDP).

Stalled projects

13. (1) The County may revive any stalled project in a ward if the communities and the people of the ward feel the revival is absolutely necessary and the initial investor had unnecessarily abandoned the project.

(2) Without prejudice to the provisions of subsection (1) above, an officer may allocate funds to a project that is already running with another or partner, subject to this Act and any other law.

(3) No funds may be allocated to a different project with a similar impact within a ward if an existing project stalled.

Right of residents to seek information on projects

14. (1) Any resident of a ward may, with or without giving reasons, and through the Development Committee, seek to have more information about a project.

(2) A resident may in writing, if the information required under subsection (1) is not within the knowledge of the Development Committee, request the relevant County Chief Officer for the information required.

(3) The residents may through the, Development Committee petition for the stopping of a project if impropriety is alleged and where such a petition is received no further funds may be paid to the project until all allegations of impropriety are dispensed with.

County Treasury to provide guidelines

15. (1)The County Treasury shall, in accordance with section 105(f) of the Public Finance Act, issue guidelines relating to the implementation of the principle of equalization and equality under this Act, to accounting officers in charge of projects.

(2) The guidelines issued under subsection (1) shall be formulated as a proposal in the budget of each financial year and adopted by the County Assembly during the budgetary process of that financial year.

PART III—ADMINISTRATION AND PROJECT IMPLEMANTATION

Equitable Development Committee

16. (1) There is established a Committee to be known as the County Equitable Development Management Committee.

(2) The County Management Committee shall consist of—

(a) the County Executive Committee member of the County Department for the time being responsible for matters relating to finance or a designated alternate not below the level of Chief Officer;

(b) the County Executive Committee Member of the County Department for the time being responsible for matters relating public works or a designate alternate not being below the level of Chief Officer;

(c) the County Executive Committee Member of the County Department for the time being responsible for matters relating to Planning or a designated alternate not being below the level of Chief Officer;

(d) four persons qualified in matters relating to law, finance, accounting, engineering, economics or community development, competitively and transparently recruited by the County Public Service Board and appointed by the Executive Committee member in accordance with subsection (4) taking into account gender balance, special interests and the diversity of the County;

(e) the person responsible for legal matters in the County who shall be an ex-officio member.

(3) The Executive Committee member shall appoint the Chairperson of the County Management Committee from amongst the four persons appointed in accordance with of subsection (2) (e).

(4) The names and curriculum vitae of the persons competitively and transparently recruited as members of the County Management Committee pursuant to subsection (2) (e) shall be submitted to the County Assembly for approval before the appointment.

(5) The conduct and regulation of the business and affairs of the Committee shall be as provided in the First Schedule.

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

Functions of the County Equitable Development Committee

17. The functions of the County Equitable Development Management Committee shall be to—

(a) ensure allocation and disbursement of funds in every Ward;

(b) ensure prudent management of development funds;

(c) receive and review the annual progress reports on development projects in wards;

(d) ensure maintenance of proper records, returns and reports;

(e) ensure timely submission to County Assembly of, progress reports and information as required under this Act;

(f) consider project proposals submitted from various Wards in accordance with this Act and make appropriate recommendations to the County Assembly;

(g) consider and report to the County Assembly with recommendations, names of persons required to be approved by the County Assembly under this Act;

(h) continually review ,oversee the implementation, policy framework and legislative matters that may arise in relation to the development funds; and

(i) perform such other functions as may be necessary for the implementation of this Act

Establishment of the Ward Development Committee

18. There is established in every ward a Ward Development Committee which shall be a body corporate with perpetual succession and a common seal and may, in its corporate name—

(a) sue and be sued;

(b) take, purchase or otherwise acquire, hold, charge or dispose of movable and immovable property; and

(c) do or perform all other things that may be lawfully done or performed by a body corporate for the proper discharge of its functions under this Act.

Composition of the Development Committee

19. (1) The Ward Development Committee shall be composed of—

(a) the County Assembly member representing the ward in the County Assembly and any specially elected member being an *ex-officio* member;

(b) one person representing the private sector in the ward;

(c) one person representing Non-governmental organizations within the ward;

(d) one person representing religious groups in the ward;

(e) one person representing the youths of the Ward;

(f) one person representing the women from the Ward;

(g) one person representing persons with disability in the ward;

(h) one person representing professionals in the Ward;

(i) the Ward Administrator who shall be the secretary; and

(j) one representative of the local administrators who shall be *ex-officio* member to the Development Committee.

(2) The Development 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.

(3) The term of office of the members of the Ward Development Committee shall be three years and may be renewed as may be prescribed under regulations made under subsection (4).

(4) The Executive Committee Member shall, with the approval of the County Assembly, make regulations on the qualifications for eligibility to be elected to the Development Committee and the procedures for election of the members.

(5) Subject to subsection (4), the office of a member shall fall vacant if a member—

(a) misses three consecutive sittings of the Development Committee without a reasonable explanation;

(b) is bankrupt, is of unsound mind or his or her integrity is put to question;

(c) is found guilty of a crime;

(d) is found to hold undeclared conflict of interest while holding office; or

(e) when one contravenes the provisions of chapter 6 of the constitution of Kenya.

(6) Whenever a vacancy occurs in the Ward Development Committee by reason of resignation, incapacitation or demise of a member, the vacancy shall be filled from the same category of persons where the vacancy has occurred.

Functions of the Development Committee

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

(a) co-ordinate all county development matters in the ward;

(b) deliberate on project and development proposals from the Ward and any other development which the Committee considers beneficial to the Ward and draw up a priority list, both immediate and long term, to be submitted to the relevant County Executive Committee member;

(c) ensure that the public is continuously informed and involved in projects and other developments of the county government;

(d) receive and disseminate public views on projects and development matters in the wards;

(e) Organize and coordinate meetings between the County Government and the people of the wards on development matters;

(f) ensure that projects are in line with the wards development plans and the county integrated development plan;

(g) organize and co-ordinate stakeholders in ward development plans;

(h) ensure that the funds allocated for the different projects are totally spent on the relevant projects and connected purposes;

(i) ensure that projects implemented in wards involve and benefit the residents of the relevant ward from inception to conclusion; and

(j) exercise any other power or role as is necessary for the discharge of its functions.

Powers of the Ward Development Committee

21. The Ward Development Committee shall have all 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;

(b) ensure compliance with relevant laws and contract terms;

(c) monitoring and evaluating projects within the Ward;

(d) ensure compliance with the contracts and terms of the award of contract;

(e) recover monies from contractors who have failed to comply with the terms of the award of contracts;

(f) build the capacity of residents to take part in tendering of projects;

(g) co-ordinate Activities of the Project Management Committees implementing and managing County Government funded projects in the ward;

(h) receive quarterly reports from Project Management Committees in the Ward; and

(i) submit quarterly consolidated reports on projects and development activities in the Ward to relevant county chief officers and the county assembly.

Conduct of business of the Ward Development Committee

22. (1) Subject to subsection (2), the business and affairs of the Ward Development Committee shall be conducted in accordance with the First Schedule.

(2) Except as provided in the Schedule, the Ward Development Committee may regulate its own procedure.

Project Management Committees

23. (1) There is established a Project Management Committee.

(2) The Project Management Committee shall be responsible for the effective implementation and management of the project for which it is appointed and without prejudice to the generality of the foregoing the Management Committee shall—

(a) undertake management of specified development projects in the Ward;

(b) undertake procurement of goods and services in liaison with the line department and in any event not exceeding Kenya shillings five million;

(c) receive, manage and control the administration of all funds allocated for the implementation of the relevant projects subject to approval by the Ward Development Committee;

(d) prepare work plans based on estimates and cause to be kept books of accounts and records of income, expenditure and liabilities of the projects;

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

(f) ensure meaningful engagement of citizens in the ward in the project management process; and

(g) account for funds allocated to the specific project to the Ward Development Committee on quarterly basis and submit certified books of accounts and financial performances reports as may be prescribed.

Composition of the Project Management Committee

24. The committee shall be composed of—

(a) the Village Administrator who shall be the secretary to the committee;

(b) one person representing the non-governmental organizations in the project area;

(c) one person representing the religious groups in the project area;

(d) one person representing the youth in the project area;

(e) one person representing the women in the project area;

(f) one person representing persons with disabilities in the project area; and

(g) one person representing the professionals in the project area.

PART IV—RECORDS KEEPING

Records of projects to be kept

25. (1) The Ward Management Committee shall keep and update accurate monthly records of all development projects and Activities in every ward.

(2) The chairperson of the Ward Management Committee shall submit an annual report on the Activities, operations and expenditure of

the Committee to the County Assembly through the relevant Chief Officer.

Remuneration of members

26. (1) Members of the Development Committee shall operate on part- time basis and only be entitled to allowances at a rate to be fixed by the Executive Committee Member responsible for Finance and Economic planning in consultation with the County Treasury.

(2) For the avoidance of doubt members of the Development Committee shall not be employees of the County or the National Government and shall not be remunerated as public officers or servants.

PART V—MISCELLANEOUS PROVISIONS

County equitable development Sub- Committee

27. (1) The County Executive Committee shall monitor and ensure compliance to this Act through its equitable development sub-committee consisting of—

(a) the Governor, who shall be the chairperson;

(b) the Executive Committee Member responsible for Finance, who shall be the deputy chairperson;

(c) the Executive Committee Member responsible for Administration; and

(d) the Executive Committee Member responsible for special interest groups.

(2) The function of the sub-committee shall be to ensure compliance with the provisions of the Act and be the Executive consulting organ in reference to equitable development in the County.

Offences and Penalties

28. (1) Any person who contravenes any provision of this Act commits an offence and is liable, on conviction, to a fine not exceeding Kenya shilling five hundred thousand or to a term of imprisonment not exceeding three years or to both.

(2) Where the offence committed under subsection (1) results in any financial or material loss to the County Government, the County Government shall be entitled to recover loss from the offender as a debt due to it.

Review of the operations

29. (1) The operation of this Act shall be reviewed every year, within three months after the end of the financial year, to assess its development impact in the ward in that year and where necessary a review thereof shall be undertaken to ensure better development impact.

(2) The review of the Act undertaken under subsection (1) shall—

(a) be approved by not less than seventy five per centum of all the members of the County Assembly; and

(b) shall come into effect after the financial year in which the review was done.

(3) The review of the Act under subsection (1) may originate from the County Assembly, the County Treasury or residents of the Ward and if it originates—

(a) in the Treasury, it shall be in the form of a proposal contained in a memorandum to the Assembly;

(b) from the residents, it shall be in the form of a petition to the County Assembly; and

(c) any amendment of this Act must be approved by not less than 75% of the Members of the County Assembly.

Regulations

30. The County 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.

FIRST SCHEDULE (S. 20)

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

Meetings

1. (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.

Conflict of interest

2. (1) If any person has a personal or fiduciary interest in any matter before the Development Committee, and is present at a meeting of the Development Committee at which any matter is the subject of

SECOND SCHEDULE

Sec 7

ANNEXURE TO THE REPORT BY THE DEVELOPMENT COMMITTEE

Ward .... Amount received ....

Amount allocated for administrative purposes ....

Contingency reserve (if any) ....

Nature of project:......... new Additional funding ...... partnering ....

Pending recovery suits ....

Ward	Village	Project Name	Amount allocated	Status of project *

Signed by the chairman of the committee secretary of the committee

....

Received by the CEC Date Signature

....

NB

1. State whether the project is complete or still pending indicate the expected completion date.

2. The Committee shall fill this form and return it with their reports.

3. This document shall be copied and posted in notice around the ward for the public.

4. To be delivered personally by the chairperson to the office of the County Executive Committee Member.

SECOND SCHEDULE Sec 7

ANNEXURE TO THE REPORT BY THE DEVELOPMENT COMMITTEE

Ward .... Amount received ....

Amount allocated for administrative purposes ....

Contingency reserve (if any) ....

Nature of project:......... new Additional funding ...... partnering ....

Pending recovery suits ....

Ward	Village	Project Name	Amount allocated	Status of project *

Signed by the chairman of the committee secretary of the committee

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Received by the CEC Date Signature

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NB

1. State whether the project is complete or still pending indicate the expected completion date.

2. The Committee shall fill this form and return it with their reports.

3. This document shall be copied and posted in notice around the ward for the public.

4. To be delivered personally by the chairperson to the office of the County Executive Committee Member.

MEMORANDUM OF OBECTS AND REASONS

Firstly, the Bill aims at providing for the realization of equal and equitable allocation of resources for development projects within wards, to provide for the establishment of a ward development and project implementation committees.

Secondly, the Bill provides for 40% annual budget allocation to county development and it also ensures that thirty percent (30%) of the funds appropriated to the department for development purposes are equally shared among the wards in the county. In addition, the Bill provides a formula which shall be used in coming up with the pre-determined sharing of the funds with appropriate modifications and considerations.

Part III of the Bill provides for the Administration and project implementation. It establishes a ward Development Committee which shall coordinate all county development matters in the wards.

Part IV of the Bill provides for the keeping of records of all development projects and remunerations of the members of the development committees.

Part V of the Bill provides for the monitoring and evaluation by the Executive Committee. It also provides for penalties for violation of the Act and provides for the powers of the Relevant County Executive Committee Member to make regulations.

Finally, the enactment of this Bill shall occasion additional expenditure of the public funds.

LEONARD KIRUI,
Member of County Assembly.