

Vihiga County Community Development Bill, 2019

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The Vihiga County Community Development Bill, 2019

An ACT of the County Assembly of Vihiga to provide for the Establishment, Administration and use of the Community Development projects and for connected purposes

ENACTED by the County Assembly of Vihiga as follows

PART I-PRELIMINARY

Short title and Commencement

1. This Act may be cited as the Vihiga County Community Development Act, 2019 and shall come into operation seven days From the date Assent.

Interpretation

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

"Chief Officer “ means Chief Officer for the time being responsible for finance and economic planning;

"Community” means residents of a particular area or region as a Ward, location or sublocation and having common interests;

"Community Projects Forum" means Forum established under section 10

" Executive Committee Member" means the Member of the County Executive Committee for the time being responsible for finance and economic planning;

“Vihiga County Budget and Economic Forum” means the Forum established pursuant to section 137 of the Public Finance Management Act, 2012.

"Officer Administering the scheme" means the person appointed under section 8 of this Act.

“Project” means an eligible project as described in this Act;

“Scheme” means the Community Development Scheme

established under Section 3 of this Act;

"Village Administrator “means village Administrator appointed under the County Government Act, 2012;

“Ward” has the meaning assigned in the Elections Act, 2011

PART II-ESTABLISHMENT OF COMMUNITY DEVELOPMENT SCHEME

Establishment (3) There is established a Scheme to be known as the Community Development Scheme

Object and Purposes of Scheme 4. The purpose of the Scheme is to facilitate public participation and to give self-determination to the community for their socio-economic development and is intended to achieve the following objectives: -

- a) give effect to the objects of devolution and in particular Articles 174(c), 174(d), 174(f), 174(g), 174(h), 176(2) and 196 of the Constitution;
- b) channel the use of public funds at the lowest level of governance where the most vulnerable exist;
- c) ensure equity in the distribution of funds in the County;
- d) ensure community driven development and local level participation in the identification, prioritization, implementation and evaluation of development activities at the Ward level; and
- e) provide for accountability and transparency in the disbursement and use of Public resources.

PART III-CAPITAL OF THE SCHEME

Capital of (5).1. The Capital of the Scheme shall consist of;

Scheme a) an amount being not less than 25% of the development budget calculated on the basis of the most recent audited accounts of Vihiga County;

b) any monies accruing to, donated, lent or received by the scheme from any other lawful source

(2) The amount referred to in sub-section 1 (a) shall be appropriated by the County Assembly in each financial year.

(3) Any monies which remain unutilized at the end of the financial year shall be re-appropriated for the same purpose in the subsequent financial year.

Division of (6) The funds appropriated in accordance with section 5(2) shall Funds be shared amongst the Wards as follows:-

a) eighty percent (80%) shall be shared equally among all the Wards in Vihiga County;

b) twenty percent (20%) shall be equitably shared on the basis of population and level of development.

(2) Notwithstanding the generality of subsection 1(b), the population and level of development in a Ward shall be determined by the department of the County Executive responsible for matters of economic planning.

Disbursement of Funds 7. The County Treasury shall ensure timely disbursement of funds for implementation of projects under this Act.

PART IV–ADMINISTRATION OF THE SCHEME

Officer 8. The Officer Administering Scheme shall be the chief officer Administering responsible for matters of finance the Scheme

Functions of 9. The Officer Administering the Scheme shall perform the the Officer the following functions;

- (1) Offer secretariat services to the Community Project Committee
- Administering 2) Coordinate and liaise between the Vihiga County Budget and the Scheme Economic Forum and the Community Projects Forums;
 - 3) ensure allocation and disbursement of funds in every Ward;
 - (4) ensure prudent management of the Scheme;
 - (5) receive project proposals submitted for various wards in accordance with the Act and forward to the relevant department of the County Executive for costing;
 - (6) receive from the relevant department of the County Executive the reports on costing and forward to the Community Project Committees;
- (7) Submit the list of approved projects to the Vihiga County Budget and Economic Forum for integration with the relevant Department's Budget Estimates;
- (8) keep or cause to be kept proper books of accounts and other books and records related to the Scheme;
- (9) Maintain an asset register for each Ward;
- (10) Be the custodian of all records and assets of the Scheme;
- (11) Perform any other duties that maybe reasonably assigned to him by the Member of the County Executive Committee from time to time.

Secondment of 10. The Member of the County Executive Committee shall, upon staff request by officer administering the scheme, facilitate secondment to the scheme of such officers from the County Public Service as may be appropriate and necessary for the proper management of the scheme

PART V–COMMUNITY PROJECTS FORUM AND PROJECT IDENTIFICATION

Community (11). There is established the Community Projects Forum in every Projects Forum Ward consisting of;

- (a) The Ward Administrator who shall be the Secretary;
- (b) A representative of youth groups in the Ward;
- (c) A representative of women groups in the Ward;
- (d) A representative of persons living with disabilities in the Ward
- (e) All village administrators in the ward.

(3) The persons referred to in section 2(b),(c), (d) and (e) shall be appointed by the Executive Member upon nomination by the relevant groups;

(4) The members shall choose the chairperson from amongst the Members.

(5) The Executive Member shall prescribe the procedures of Conducting the business and affairs of the Community Projects Forum.

Functions of

Projects Forum12. The Community Projects Forum shall be responsible for

- a) Organizing meetings in the Ward for community participation;
- b) Harmonizing all projects identified in the Ward;
- c) Preparing a list of priority projects in the Ward as identified by the residents;

- d) Forwarding the projects list to the relevant department for costing.
- e) Preparing the project proposal for each project in the Ward proposed for funding.
- f) Ensuring that the projects identified are in conformity with the County Integrated Development Plan, Annual Development Plan and any other County Development Plans.
- g) Performing any other functions necessary for the proper implementation of the Scheme

Removal of Members (13) A member other than the Ward Administrator and the Village Administrators may cease to be a member of the Community

Projects Forum ;

- (a) Resign from office by notice in writing to the Officer Administering the Scheme;
- (b) Be removed from office by the Executive Member on recommendation by the officer administering the scheme if;
 - (i). Has been absent from three consecutive meetings of the Community Projects Forum;
 - (ii). Is convicted of a criminal offence that amounts to a felony under the laws of Kenya;
 - (iii). Becomes bankrupt;
 - (iv). Is incapacitated by prolonged physical or mental illness for a period exceeding six months; or is otherwise unable or unfit to discharge his functions
 - (v) gross violation of the Constitution or any other law including this Act.

Conduct of Public Participation Forums (14) .1. The Ward Administrator shall mobilize and facilitate public Participation fora for the residents of each ward to identify priority projects in the ward in each year

Participation .

Forums (2) Notwithstanding the generality of sub-section (1), the

Public participation fora for purposes of project identification under this Act shall be held at a location generally known to host such meetings and at such times as may be prescribed.

(3) Upon project identification at the village level, the Ward Administrator shall convene the Community Projects Forum to harmonize and prioritize all projects in the ward.

(4) The Community Projects Forum shall indicate the order of priority projects identified for implementation

(5) The projects identified under this Act shall be in conformity with the County Integrated Development Plan, Annual Development Plan and any other County Development Plan.

Submission of Project Proposals (15) After approval by the Community Projects Forum, the Chairperson of the Community Project Forum, shall submit the list of proposed ward-based projects to be funded and implemented under this Act to the Officer Administering the Scheme.

(2) The Officer Administering the Scheme shall within seven days
a) receive, review and scrutinize the lists of proposed priority projects;

b) compile and consolidate the approved projects lists from all Community Projects Fora; and

c) submit the consolidated list of approved projects to the relevant Department for costing.

(3) The relevant Department shall cost the projects and submit a report to the Officer Administering the Scheme within 14 days.

Whenever, the total cost of the projects listed exceed the ceiling for a particular Ward, then in accordance with section 14(4) the order in which they are listed shall be taken as the order of Priority for purposes of allocation of funds, provided that on going projects shall take precedence over all other projects.

(4) The Officer Administering the Scheme shall submit the Consolidated list of projects to the Vihiga County Budget and Economic Forum in time for inclusion of the projects in the relevant Department's Budget Estimates.

Submission Deadline (16).1. The Executive Committee Member shall at the time of issuing the Circular under section 128(2) of the Public Finance Management Act, 2012 give a schedule of dates for submission of the projects list under this Act

(2) Notwithstanding the generality of sub-section (1), the deadline for submission must be in time for inclusion of the projects in the relevant Department's budget estimates.

Submission Form (17).1. The list of projects shall be submitted on a Ward Projects Submission Form set out in the Second Schedule to this Act accompanied by the report of the Public participation fora approving the projects and minutes of the Community Projects Forum.

(2) All projects proposed for every Ward shall be listed in the Form together with the cost estimates, amounts allocated and amounts disbursed to such projects.

Project Description Form 18. For every project listed in the Form, there shall be attached a Project Description Form set out in the Third Schedule.

List to be 19. The projects listed for each ward shall be numbered by the serialized Community Projects forum and the serial numbers of all projects in a ward as delineated by the Independent Electoral and Boundaries Commission in order to ensure that the projects retain the same serial number every year until its completion

Criteria for (20). 1. The types of projects submitted for funding under this Act Projects shall comply with the provisions of this Act.

(2) The Community Projects Forum is responsible for ensuring that the list of projects submitted for funding complies with the provisions of this Act and their total cost does not exceed the prescribed ceiling for the particular Ward.

(3) If the list of projects submitted for funding is in contravention of subsection (2) the same shall be referred back to the Community Projects Forum for amendment and re-submission.

(4) Whenever the amount for projects in a Ward is less than the prescribed ceiling for whatever reason, the shortfall shall be indicated as unallocated amount against that particular Ward on the list to be forwarded to the Officer administering the Scheme and shall be treated in accordance with section 5(3) of this Act.

PART VI -TYPES OF PROJECTS

Projects to be 21. (1) Projects under this Act shall
Community (a) be in respect of those falling within the functions of
Based the county government as contemplated under Part 2
of the Fourth Schedule to the Constitution;
(b) be community based in order to ensure that the
Prospective benefits are available to a widespread
Cross-section of the inhabitants of a particular area.

(2) Any funding under this Act shall be for a complete project or a defined phase, of a project and may include the acquisition of land and buildings.

(3) Funds provided under this Act shall not be used for the purpose of supporting political bodies or political activities or for supporting religious bodies or religious activities.

Number of Projects 22.(1) The number of projects to be included in the Ward Projects Submission Form specified in the Second Schedule shall be a maximum of seven for every Ward spread evenly, in each financial year.

(2) Project activities of a similar nature in a particular Ward may be combined and considered as one project for purposes of subsection (1) provided that the sub projects are listed in the Second Schedule.

(3) Wards may pool resources for joint projects provided that the decision for such joint projects shall first be approved by the Officer Administering the Scheme in liaison with the relevant Community Project Forum of each of the participating Wards and shall be reflected on the projects listed for each of the participating wards.

Cost Estimates to be realistic Scheme 23. The Community Projects Forum and the Officer Administering the Scheme shall make appropriate consultation with the relevant government departments to ensure that cost estimates for the projects are as realistic as possible

Personal Awards excluded 24. A project or any part thereof which involves personal awards to any person in cash or in kind shall be excluded in accordance with section 19 of the Act

PART VII-IMPLEMENTATION OF PROJECTS

| | |
|---------------------------------------|---|
| Project Implementation | <p>25.(1) Projects under this Act shall be implemented by the relevant department of the County Government.</p> <p>(2) In accordance with Section 104 of the County Governments Act, 2012, implementation of projects under this Act shall be in accordance with the planning framework established under the Public Finance Management Act, 2012 and the County Governments Act, 2012.</p> <p>(3) Without prejudice to the generality of sub-section (2), projects to be implemented under this Act shall be included in the Annual Development Plan of the County and the County Fiscal Strategy Paper.</p> <p>(4) For purposes of the budget, the projects under these Act shall be a captured as projects under the relevant department implementing the project.</p> |
| Period for implementation of projects | <p>26.A project or a defined phase of a project under this Act shall be implemented within one financial year.</p> |
| Monitoring and Evaluation | <p>27.(1) The Monitoring and Evaluation unit shall be responsible for monitoring the implementation of projects under this Act and shall submit a report on the on-going projects to the Executive Committee Member and the County Assembly.</p> |

Record of 28. The Officer Administering the Scheme shall compile and maintain a Receipts and record showing all receipts and disbursements on a quarterly basis in respect of every project and sub project under this act Disbursement and shall submit such record to the County Assembly and the Executive member.

Audit 29. All funds utilized in the Scheme as provided for under this Act shall be audited and reported upon by the Auditor-General.

PART VIII-COUNTY ASSEMBLY SELECT COMMITTEE

Establishment of the County Assembly 30.(1) The County Assembly shall, in accordance with its Standing Orders, establish a Select Committee consisting of a chairperson and not more than ten other members of the County Assembly.

Select Committee

Functions of 31. The functions of the County Assembly Select Committee shall Assembly a.) consider and recommend to the County Assembly any matter necessary, requiring action by the County Assembly pursuant to the provisions of this act.

County

Committee b.) continually review the framework set out for the efficient delivery of development programmes financed through the Act;

PART IX-MISCELLANEOUS PROVISIONS

Executive Committee Member to make Regulations 32.(1) The Member of the County Executive Committee may make regulations for the smooth running of the Scheme and such regulations shall be approved by the County Assembly before implementation.

(2) The Member of the County Executive Committee may amend any of the Schedules through a notice in the Gazette.

Provisions in the Act are Complementary (33) The provisions of this Act shall be complementary to any other development efforts by the national government, the county governments or any other agency and nothing in this Act shall be taken or interpreted to mean that an area may be excluded from any other development programmes.

(2) For the avoidance of doubt, normal Government developmental allocations shall continue alongside the projects funded under this Act

Offences and

Penalties 34.(1) Any person who misappropriates any funds or assets from the scheme or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Act, shall be guilty of an offence and shall, upon conviction be liable to imprisonment for a term not less than five years or to a fine not less than five hundred thousand years or to both

(2) Notwithstanding provisions of subsection (1) above nothing shall stop the county government from recovering in full the misappropriated funds.

(3) Any Community Projects Committee member who causes the Scheme to incur liabilities on projects not approved shall be

personally or collectively liable to the extent of the losses incurred.

PART X-TRANSITIONAL PROVISIONS

Transitional Duties of the Ward Administrator 35.(1) Pending the appointment of the Village Administrators, the Ward Administrator to whom a particular village Administrator is supposed to report shall perform all the functions required of the village administrator under this Act.
(2) Subsection (1) above lapses with the appointment of a village administrator with respect to the functions of that particular village administrator.

Repeal of Vihiga County Ward Development Act No.7 of 2014 36.The Vihiga County Ward Development Fund Act, No.7 of 2014, is consequently hereby repealed on coming into operation of this Act.

County Ward Development Act No.7 of 2014

FIRST SCHEDULE (s. 6)

CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMUNITY PROJECTS FORUM.

Tenure of the Forum Members The Chairperson or a member of the Community Projects Forum other than the Ward Administrator and the Village Administrator shall, subject to the provisions of this schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment for a further term of three years.

Meetings (1) The Community Projects Forum shall meet not less than six and not more than eighteen times in every financial year and not more than two months shall elapse between the date of

one meeting and the date of the next meeting.

(2) Notwithstanding sub paragraph (1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Community Projects Forum at any time for the transaction of the business of the Community Projects Forum.

(3) Unless three quarters of the total members of the Community Projects Forum otherwise agree, at least fourteen days' written notice of every meeting of the Community Projects Forum shall be given to every member of the Community Projects Forum.

(4) The quorum for the conduct of the business of the Community Projects Forum shall be five members.

(5) The Chairperson shall when present, preside at every meeting of the Community Projects Forum but the members present shall elect one member to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached, a decision on any matter before the Community Projects Forum shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Forum shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Community Projects Forum may determine its own procedure and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

Committees of the Community Projects Forum (1) The Community Projects Forum may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

- (2) The Community Projects Forum shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.
- (3) The Community Projects Forum may where it deems appropriate, invite any person to attend the deliberations of any of its committees.
- (4) All decisions by the committees appointed under subsection (1) shall be ratified by the Community Projects Forum.

Disclosure of Interestmatter (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Community Projects Forum who contravenes subparagraph (1) shall cease to be a member of the Community Projects Forum upon direction of the Member of the Community Projects Forum.

Common Seal (1) The common seal of the Community Projects Forum shall be kept in such custody as the Community Projects Forum may direct and shall not be used except on the order of the Forum.

(2) The affixing of the common seal of the Community Projects Forum shall be authenticated by the signature of the Chairperson, the Ward Administrator and one member nominated by the Community Projects Forum and any document not required by law to be made under seal and all decisions of the Community Projects Forum may be authenticated by the signatures of the Chairperson, Ward

Administrator and that member nominated by the Community Projects Forum.

(3) The common seal of the Community Projects Forum when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Community Projects Forum under this section shall be presumed to have been duly given.

SECOND SCHEDULE (s. 17)
WARD PROJECTS SUBMISSION FORM

Ward No _____ ; Ward Name _____ ; Financial year _____ .

Chairperson Community Project Forum Signature.....

Date.....

| Serial | Name of Project | Amount allocated |
|------------------------------|-----------------|------------------|
| Total for the Financial Year | | |

THIRD SCHEDULE (s. 18)
PROJECT DESCRIPTION FORM

Ward No:

Ward NameCounty.....

Project Number.....

Project Title.....

Sector.....

Status of projects (tick one)

(a) New (b) Extension .

(C) On-going (b) Rehabilitation .

Brief statement on project status at time of submission

Financial year.....to.....

Original Cost estimates, in KSh.....dated.....

Amount allocated last financial year.....

Person completing form:.....

Name

Position

This Day.....of

MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to facilitate public participation and to give self-determination to the community for their socio-economic development by establishing the Community Development Scheme

Part I of the Bill sets out the preliminary matters including the commencement date and the definition of various terms used in the Bill.

Part II of the Bill establishes the Community Development Scheme and the objects and purpose of the Scheme.

Part III of the Bill outlines the capital of the scheme, the method of division of funds and disbursement of funds.

Part IV provides for the administration of the scheme, sets up the Officer Administering the Scheme and provides for secondment of staff to the Scheme.

Part V of the Bill sets up the Community Projects Forum, the membership and functions of the Community Projects forum, the types of projects that may be submitted under this Act. In particular, this Part provides that such projects must be community based.

Part VI of the Bill provides for the mechanism of implementation of projects. This covers the number of projects and costs estimates for the projects.

Part VII of the Bill provides for the implementation of projects, the period within which projects should be implemented, monitoring and evaluation, record keeping and provides for auditing of projects.

Part VIII contains miscellaneous provisions. This part also provides for offences and penalties.

Part IX provides of the bill provides for transitional duties of the Ward Administrator This part also provides for repeal of Vihiga County Ward Development Fund Act of 2014.

Dated this Day of

Hon.Patrick Akhwale
Chairperson Ward Development Committee