

GOVERNMENT OF NAIROBI CITY COUNTY



THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

THIRD ASSEMBLY

(SECOND SESSION)



NCCA/TJ/PL/2023(77)

12TH OCTOBER 2023

PAPER LAID

SUBJECT: REPORT OF COMMITTEE

Pursuant to Standing Order 196 I beg to lay the following Paper on the Table of this Assembly, today Thursday 12th October 2023:

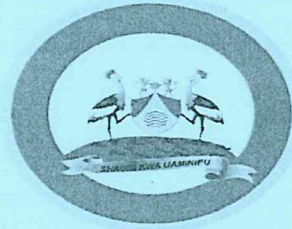
- THE REPORT OF THE SELECT COMMITTEE ON WARD DEVELOPMENT FUND ON THE WORKSHOP HELD FROM 14TH TO 17TH MAY 2023 AT MAXLAND HOTEL IN KIAMBU COUNTY.

(Chairperson, Select Committee on Ward Development Fund)

Copies to:
The Speaker
The Clerk
Hansard Editor
Hansard Reporters
The Press

*Paper laid by Hon.
Samora Mwaure, met
on 12/10/2023.*

THE NAIROBI CITY COUNTY GOVERNMENT



THE NAIROBI CITY COUNTY ASSEMBLY

THIRD ASSEMBLY – SECOND SESSION



THE REPORT OF THE SELECT COMMITTEE ON WARDS DEVELOPMENT FUND

ON

THE WORKSHOP HELD FROM SUNDAY 14TH TO WEDNESDAY, 17TH MAY, 2023
AT MAXLAND HOTEL, KIAMBU COUNTY

Clerk's Chambers,
CITY HALL,
NAIROBI.

Edition: June, 2023

Table of Contents

| | |
|---|---|
| 1. PREFACE..... | 2 |
| 1.1. Establishment and Mandate..... | 2 |
| 1.2 Committee Membership | 2 |
| 1.3 Committee Secretariat | 2 |
| 1.4 Background for the induction Workshop | 3 |
| 1.5 Acknowledgement | 3 |
| 2.0. INTRODUCTION | 4 |
| 2.1. Official Opening..... | 4 |
| 3.0 REVIEW OF THE NAIROBI CITY COUNTY WARDS DEVELOPMENT FUND, 2014 | 5 |
| 3.1 Establishment of the Act | 5 |
| 3.2. Guidelines form the Controller of Budget and Direction from the Commission on Constitution Implementation | 5 |
| 4.0. CURRENT STATUS OF NAIROBI WARD DEVELOPMENT FUND..... | 8 |
| 5.0. PROPOSED AMENDMENTS..... | 9 |

1. PREFACE

1.1. Establishment and Mandate

Hon. Speaker,

The Nairobi City County Assembly – Third Assembly Select Committee on Wards Development Fund was established on Thursday 27th October, 2022, pursuant to the provisions of Section 35(1) of the Nairobi City County Wards Development Fund, 2014.

The Committee is mandated to consider and recommend to the County Assembly any matter requiring action by the County Assembly pursuant to the provisions of the Act; oversee the implementation of the Act and shall after every two years submit a report to the County Assembly and where necessary propose any amendments to the Act, in particular with respect to the Quantum of funds repayable into the Fund in accordance with Section 4 of the Act; oversee the policy framework and legislative matters that may arise in relation to the Fund; continually review the framework set out for the efficient delivery of development programmes financed through the Fund; and consider and report to County Assembly with recommendations, names of persons required to be approved by County Assembly under the Act.

1.2 Committee Membership

Committee Membership comprises of:

1. Hon. Dabar Ahmedqadar, MCA – Chairman
2. Hon. Mwaura Samora, MCA – Vice-Chairman
3. Hon. Silas Matara, MCA
4. Hon. John Musila, MCA
5. Hon. Gerald Irungu, MCA
6. Hon. James Koria, MCA
7. Hon. Scolastica Muthoni, MCA
8. Hon. Sospeter Mumbi, MCA
9. Hon. Joseph Ndungu Karanja, MCA
10. Hon. Abel Osumba Atito, MCA
11. Hon. Hamisi Maleya, MCA

1.3 Committee Secretariat

The Committee Secretariat is comprised of the following officer: -

1. Ms. Hellen Mutia – Senior Clerk Assistant
2. Ms. Mercy Senewa – Clerk Assistant

1.4 Background for the induction Workshop

Hon. Speaker,

The County Assembly Committees are extensions of the Assembly established under the County Assembly Standing Orders and in accordance with Section 14 of the County Governments Act, 2012. The Committees are supposed to perform functions that the Assembly is not well fitted to consider in plenary. Following the constitution of County Assembly Committees on 27th October, 2022 and as part of the County Assembly mandate to build capacity for the Members of the County Assembly in undertaking their functions, the Select Committee Wards Development Fund held it's a workshop from Sunday, 14th to Wednesday, 17th May, 2023 at Maxland Hotel, Kiambu County. The core objectives of the training workshop was to review the Ward Development Fund Act, 2014 and subsequent Amendments.

1.5 Acknowledgement

Hon. Speaker,

I wish to acknowledge with gratitude the offices of the Speaker and the Clerk of the County Assembly for the support extended to the Committee to facilitate its third induction workshop to enhance the capacity of the Members in undertaking their functions.

Finally, much thanks to the Members of the Committee and the Secretariat for their dedication, untiring commitment and valuable contributions during the induction workshop.

Hon. Speaker,

It is therefore my pleasant duty and privilege, on behalf of the Members of the Select Committee on Wards Development Fund to table the report of the Committee on its third second induction workshop held from Sunday, 14th to Wednesday, 17th May, 2023 at Maxland Hotel, Kiambu County.

Signed 

Hon. Dabar Ahmedqadar, MCA, MCA
Chairman

Date 

2.0. INTRODUCTION

The County Assembly Committees are extensions of the Assembly established under the County Assembly Standing Orders and in accordance with Section 14 of the County Governments Act, 2012. The Committees are supposed to perform functions that the Assembly is not well fitted to consider in plenary. Following the constitution of County Assembly Committees and as part of the County Assembly mandate to enhance capacity for the Members of the County Assembly in undertaking their functions, the Select Committee Wards Development Fund held its workshop from Thursday, 2nd to Sunday 5th March, 2023 at Maxland Hotel, Kiambu County.

The workshop entailed the overview of the Nairobi City County Wards Development Fund Act, 2014, the implementation of the Act, challenges and proposed amendments to the Act for effective implementation of the Ward Development Fund.

2.1. Official Opening

The workshop was officially opened by a word of prayer by the Chairman before welcoming the Members present and Secretariat to the meeting. The Chair then invited Members, and the Secretariat to introduce themselves and subsequently urged Members to actively participate in the proceedings to enable them come up with resolutions and way forward. The Secretariat took the Committee through the main objectives of the workshop which was to review the Nairobi City County Ward Development Fund Act 2014 and the subsequent amendments.

3.0 REVIEW OF THE NAIROBI CITY COUNTY WARDS DEVELOPMENT FUND, 2014

The County Assembly Legal Counsel Officer took the Members through Section by Section of the Nairobi City County Wards Development Fund Act, 2014 as follows: -

3.1 Establishment of the Act

That the Nairobi City County Ward Development Fund Act, 2014 was enacted by the County Assembly on 11th February, 2014 with the main objective of establishing the Ward Development Fund.

That Section 3 of the Act outlined the objects and purpose of the Act as being:

1. To further the objectives of the provisions of Article 186 of the Constitution of Kenya, 2010 (respective functions of the two levels of governments) and Article 207 (2) (a); and
2. Ensure that a specific portion of the-County-annual budget is devoted to the Wards for-purposes of development and in particular the fight against poverty at the Ward level.

That Article 207(2) of the Constitution of Kenya, 2010 provided for the two ways in which Funds may be withdrawn from a County Revenue Fund. These are either;

- a) as a charge that is provided for by an Act of Parliament or by legislation of the County or
- b) as authorized by an appropriation by legislation of the County.

It was on the basis of Sub-Article (2) (a) that the Nairobi City County therefore enacted the Wards Development Fund Act, 2014.

That in the year 2014, there was a Circular Ref. *OCOB/CIRCULAR NO.26/2014* dated December 18th, 2014, from the Officer of the Controller of Budget addressed to all Counties, giving guidelines for operationalization of Ward Development Funds.

That upon publication of the Act, various issues were raised from both the Office of the Controller of Budget and the Commission on Implementation of the Constitution on the implementation of the Act. These issues led to an amendment of the Act in the year 2015. The amendment partially addressed the issues raised and a further amendment was made in the year 2016.

3.2. Guidelines from the Controller of Budget and Direction from the Commission on Constitution Implementation

In the constitutional principal of separation of powers (Arts. 175 & 179 of the Constitution of Kenya, 2010) the guidelines provided the role of MCAs were to mobilize the residents of each ward for purposes of identifying the projects for each financial year through public participation and also exercise oversight on implementation while the roles of the County Executive would be implementation of the projects. However, the Act had granted Members the power to constitute the WDF Committees in the Wards and become an ex-officio member of the Committee making it impossible for them to oversee the implementation with accountability and impartiality.

The Act had provided for opening of Ward Fund accounts for each ward in contravention of the guideline requiring that only one bank account be maintained. This was amended in 2015(deletion of Section.16)

Duplicity of functions- The County Management Committee seems to duplicate some functions of the County Executive Committee. Further, the Executive Committee was well capable of performing the said functions of the County Management Committee. The PFM Act at Section 116 the CEC gives powers to CEC responsible for Finance to establish public funds with approval of the Executive Committee and the Assembly and shall designate an officer responsible for administering the Fund. It follows that this officer can work directly with the Executive Committee instead of creating another Management Committee in contravention of the principles of Public Finance of prudent and responsible fiscal management and economic use of resources. This was never amended.

The Challenge of County Planning: - The establishment of the Fund was invalid as its existences had not been provided for in the County Integrated Development Plan (CIDP) and therefore its allocation of 5% of the County's revenue was illegal. -This has since been provided for in the subsequent CIDP.

It was noted that notwithstanding the enactment of the three WDF Amendment Acts in in years 2014, 2015 and 2016, implementation of the said Act was still a challenge.

Subsequently, in the year 2018, a Circular Ref. COB/CIR/002/Vol.1 dated 19th January, 2018, was received from the Office of the Controller of Budget on the establishment of Ward Development Funds. The circular raised a concern that the legislations establishing the WDF Funds did not meet conditions prescribed in Regulation 197 of the Public Finance Management (County Government) Regulations 2015 which enumerates minimum requirements for establishment of a County Public Fund:

1. Most of the projects to be funded by the Fund were similar to those that would ordinarily be delivered through the normal structure of budget appropriations thus contravening Regulation 197(1)(b); and
2. The Funds would be dependent on annual financing from: the County Exchequer which is contravention of Regulation 197(1)(e)

That the two observations/guidelines were not incorporated in the WDF Act by any amendment making it impossible for the Controller of Budget to authorize any withdrawal from Public Funds.

That however, to address the issue of pending bills and to ensure WDF projects are implemented in the best available possible way, it was agreed in a meeting held on 29th May 2018 between the officials from the Office of the Controller of Budget, the County Executive and the Select Committee on Wards Development Fund that: -

- a) The County would undertake a Supplementary Budget which would revote the funds in the WDF to the line Departments where the projects would ordinarily be domiciled and payments to contractors would be made from the line Department; and
- b) The County would engage with Parliament to amend the provisions of Regulation 197 of the PFM (County Governments) Regulations, 2015.

4.0. CURRENT STATUS OF NAIROBI WARD DEVELOPMENT FUND

The Facilitator took the Committee through the current status of the Nairobi City County Ward Fund Act, 2014 as follows: -

That the main contentious issue in the operationalization of the Ward Development Fund was the provisions of Regulation 197 (1) (e) of the PFM (County Government) Regulations 2015 which provides that the Fund and its existence will not depend only on annual financing from the County exchequer.

That the Controller of Budget maintains the need to ensure compliance with PFM Regulations on Funds and that the OCOB is mandated to ensure the same. The controller of Budget further emphasized her duty under Article 228(5) of the Constitution to ensure that all withdrawals are in accordance with the law.

Consequently, due, to non-conformity with the PFM (County Government) Regulations, the WDF Act cannot be a basis for withdrawal of funds.

Further, in accordance with Article 191 of the Constitution, the PFM Act was the superior law in hierarchy to a County Statute by dint of being a national legislation applicable to both levels of government thus takes precedence over all other legislations on issues of establishment and the management of the public funds.

Consequently, the legal position was that there was need to ensure conformity of the WDF Act to the PFM (County Government) Regulations.

During the deliberations, the Committee noted the need for the Act to be amended in conformity with the law and the guidelines/circulars from the Office of the Controller of Budget. That notwithstanding any amendments, political goodwill was essential in the actualization of WDF.

Meanwhile, the Committee was of the view that the current Act be retained without further amendments as it waiting the consideration of proposed legislation on Ward Development Fund Program this is to allow retain the current Act without amendments and allow for the ongoing Ward Development Projects to be included in the budget and executed as Ward Development Programs within the pertinent sector(s), rather than through the Ward Development Fund for disbursement purposes, while safeguarding the allocated funds until the enactment of new legislation into law.

5.0 PROPOSED AMENDMENTS AND WAY FORWARD

After a successful eye-opening deliberations on the Nairobi City County Wards Development Fund Act 2014, the Committee made therefore made the following proposals:

Proposed Amendments

- I.) Align the Nairobi Ward Development Fund to the PFM (County Government) Regulations 2015 and more specifically Regulation 197(1) (e) by providing for other sources of the Fund other than depending on the county exchequer;
- II.) The Officer administering the Fund was to be a technical person preferably a civil engineer to ensure a relevant understanding of the majorly technical nature of the WDF projects;
- III.) Section 8(4) (a) be amended to provide that the Officer administering the Fund shall be appointed by the County Executive Committee upon approval by the County Assembly;
- IV.) Section 32 be amended excluding the constitution of the WDF Committee by the MCAs;
- V.) The established Ward Development Fund Management Committee be abolished and its functions be carried out by the County Executive Committee;
- VI.) Develop a totally different Act on Ward Development Projects without creating a Fund and therefore repeal the Ward Development Fund Act. A possible challenge would be if the County Ward Development Equalization Fund ever attracts political goodwill in future and is enacted thereby establishing Ward Development Fund for each County; Further, it is the Ward Development Fund Act that creates the Assembly Select Committee on Ward Development Fund; and