



REPUBLIC OF KENYA
TWELFTH PARLIAMENT - (FOURTH SESSION)
THE NATIONAL ASSEMBLY

COMMUNICATION FROM THE CHAIR

(No. 25 of 2020)

THE NATURE OF THE EQUALISATION FUND BILL, 2019 (NATIONAL ASSEMBLY BILLS No. 43 OF 2019)

Honourable Members, You will recall that during the morning sitting of Wednesday, 13th November, 2019, the Minority Party Deputy Whip, (the Hon. Chrisanthus Wamalwa,MP) sought direction of Speaker on the nature of the Equalisation Fund Bill, 2019. At the time, the House was considering the Motion for Second Reading of the Bill which is sponsored by the Member for Tiaty, the Hon. Wiliam Kasait Kamket. In his request, he sought guidance on whether, after the passage of the Bill by this House, the Bill would be forwarded to the Senate for consideration. It was the contention of the Hon. Member that, whereas the Memorandum of Objects and Reasons to the Bill states that the Bill does not concern county governments, the administration of the Equalisation Fund as proposed under the Bill affects the powers and functions of county governments. In this regard, he was of the view that, the passage of the Bill would require the participation of the Senate. When debate on the Second Reading of the Bill resumed on Wednesday, 20th November 2019, the Chair undertook to provide guidance in due course, after the Bill is considered at Third Reading.

Honourable Members, Noting that the Bill proceeded to consideration in Committee of the whole House and was read a *Third Time* today afternoon, I will hereby proceed to give my guidance, ~~before,~~ as follows-

1. First, the provisions of Article 204 (3) (b) of the constitution empowers the National Government to utilize the Equalization Fund “either **directly**, or indirectly through conditional grants to counties in which marginalized communities exist”. The Equalisation Fund Bill, 2019 seeks to operationalize the said provision . Clause 3 of the Bill outlines that its provisions apply to the **direct** use of the Fund by the National Government to provide the various services required under Article 204 of the Constitution. The rest of the Bill establishes a framework through which the services are to be provided to the marginalised areas determined by the Commission on Revenue Allocation in their report prepared pursuant to Article 216 of the Constitution;
2. Second, the Bill further proposes the establishment of Local Committees in each ward within the marginalised areas tasked with identifying projects for funding in consultation with local communities. The Bill also establishes a Board to oversee the administration of the Fund.
3. Article 110(1) of the Constitution **Honourable Members** defines a Bill concerning county governments as, and I quote,—

- (a) a Bill containing provisions affecting the functions and powers of county governments set out in the Fourth Schedule;*
- (b) a Bill relating to the election of members of a county assembly or a county executive; and,*
- (c) a Bill referred to in Chapter Twelve affecting the finances of county governments.*

4. The provisions of the Equalisation Fund Bill, 2019 seek to operationalize Article 204 of the **Constitution** by outlining the mode of administering the Fund when used directly by the National Government. I note that it touches on the following functions and powers which are concurrently exercised by both levels of government—

(a) Provision of Water, which is function exercised by both levels of government pursuant to Paragraph 22 (c) of Part 1 and Paragraph 11(b) of Part 2 of the Fourth Schedule to the Constitution, respectively;

(b) Provision of Roads, which is also a function exercised by both levels of government pursuant to Paragraph 18 (b) and (c) of Part 1 and Paragraph 5(a) of Part 2 of the Fourth Schedule to the Constitution, respectively;

(c) Provision of and regulation of Health facilities, which is a function exercised by both levels of government pursuant to Paragraph 23 of Part 1 and Paragraph 2 (a) of Part 2 of the Fourth Schedule to the Constitution, respectively; and,

(d) Provision of and planning for Electricity, which is also a function exercised by both levels of government pursuant to Paragraph 31 of Part 1 and Paragraph 8(e) of Part 2 of the Fourth Schedule to the Constitution, respectively.

5. Article 110(3) requires the Speaker of the Senate and I to jointly **resolve** any question as to whether a Bill concerns county governments, and if it does, whether it is a special or an ordinary Bill. Standing Order 121(3) provides that the Speakers may agree on an **appropriate framework** to actualize that provision.

Having said that **Honourable Members**, with respect to the question before the Speaker, there is no doubt that the administration of the Equalization Fund affects the functions and powers of county governments in terms of Article 110(1) (a) of the Constitution. **In this regard, the Equalisation Fund Bill, (National Assembly Bill No. 43 of 2019) sponsored by the Member for Tiaty and which was passed by the House today afternoon, clearly concerns county governments** and the participation of the Senate in its passage is therefore mandatory.

Honourable Members, that the Speaker's considered opinion which he undertakes to also share with the Speaker of the Senate in furtherance to the provisions of Standing Order 121(3), when forwarding the Bill to the Senate, now that it has been passed and read a Third Time today afternoon.

The House is accordingly guided.

I thank you!

A handwritten signature in blue ink, appearing to be 'Justin B. Muturi', is written over a horizontal line. A vertical line descends from the signature, passing through the text below.

THE HON. JUSTIN B. MUTURI, E.G.H., MP
SPEAKER OF THE NATIONAL ASSEMBLY

Wednesday, May 6, 2020

