



Pastoralist Parliamentary Group



Drylands Learning and
Capacity Building Initiative
for Improved Policy and
Practice in the Horn of Africa

DISCUSSION BRIEF: Marginalized communities losing an opportunity: Urgent need for improvement and efficiency of the Equalization Fund

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Background

The Equalization Fund was established under Article 204 of the Constitution to address the marginalization and the low level infrastructure in Northern Kenya and other regions. It provides for annual appropriation of one half per cent of all the revenue collected by the National Government each year, calculated on the basis of most recent audited accounts. The fund is to be used towards improving the basic but critical services such as water, roads, health facilities and electricity for the marginalized communities/areas to bring the quality of those services to the levels of other communities/areas in Kenya.

The Constitution under Article 216 (4) obligated the Commission on Revenue Allocation to determine, publish and regularly review a policy, which sets out a criteria for the identification of marginalized areas for purposes of applying Article 204 (2). In February 2013, the Commission of Revenue Allocation developed a marginalisation policy for 2014-2017, identifying fourteen counties¹ to benefit from the Fund and provided a framework to guide in the planning, implementation, and monitoring and evaluation of the Fund. This policy was presented and approved by the National Parliament in December 2014.

Progress since established in 2010

A guideline on the administration of the Equalisation Fund was developed in 2014 and a Senate Select Committee was set up in November 2014 to review it. Parliament approved the guideline together with the Marginalisation Policy. The guideline specified the sources, objectives, administration, and management and winding up of the Equalization Fund and proposed that a framework be developed for how the Fund would be disbursed.

The Guideline was gazetted on 13th March 2015, Vol. CXVII—No. 26 Gazette Notice no. 1711. The Notice established unincorporated board that is known as the Equalization Fund Advisory Board consisting of; (a) the Principal Secretary (PS) responsible for finance as its chairperson. (b) Principal Secretary for Devolution and Planning or representative; (c) Principal Secretary for water or representative; (d) Principal Secretary for roads or representative; (e) Principal Secretary for health or representative; (f) Principal Secretary for energy or representative; (g) Principal Secretary for national coordination or representative; and (h) four other members of either gender appointed by the Cabinet Secretary (CS) from outside the Public Service. The Board is mandated to co-opt, on a needs basis, others to enhance the efficient discharge of its functions. The Board is also allowed to establish sub committees working under its direction in the marginalized areas to assist in the identification of the projects. It was stated that the Board should meet not less than 4 times a year carry out the following functions:

- Advise on the allocation of funds between the various basic services;
- Review the performance of the fund;
- Review the proposed work plan;
- Advise on the distribution of the resources for the various marginalised areas.

¹ Turkana, Mandera, Wajir, Marsabit, Samburu, West Pokot, Tana River, Narok, Kwale, Garissa, Kilifi, Taita-Taveta, Isiolo and Lamu.



The Guideline reiterated that the Constitution provides for the National Government to use the Fund either directly or indirectly through the conditional or unconditional grants to the marginalised counties.

Delay in disbursement of the Fund and pressure from PPG

Towards end of the 2015, frustrated by the lack of progress on the disbursement of the Fund, the Pastoralist Parliamentary Group (PPG) started intensive lobbying that included filing of a legal suit at the High Court to compel the National Government to operationalize the fund.

The PPG succeeded in making the Fund a political issue and managed to get the President and his Deputy to attend the Pastoralist Leadership Summit (PLS) conference in Isiolo County on 11th March 2016 to respond to their demands. The President announced the launch of the Equalization Fund with an initial allocation of KSh6 billion shillings. He said this initial allocation was equivalent to 0.8% of the last audited revenues approved by the National Assembly, which was an improvement on the minimum constitutional requirement of 0.5%. He also promised that his administration *“plan to continue exceeding the minimum requirement of allocation until it compensates for the time that has lapsed without the Equalization Fund.”*

The utilisation of the Equalisation Fund to date

In April 2016, the National Treasury published the 2016/2017 estimates of revenue and expenditure of the Equalisation Fund for the year ending 30th June 2017. The document stated that the total entitlement of the Equalisation Fund for the financial years 2011/2012 to 2016/2017 was estimated at Ksh20,080,759 and the proposed allocation for the FY 2016/17 was Kshs6 billion, which together with the KSh6.4 billion (reflected as balance brought forward from previous year allocation), brings the total amount available for projects across the 14 counties to Kshs12.4 billion. Out of this, the Board’s recurrent grant towards administrative services and operational activities are estimated at Ksh598.82 million while the remaining Ksh11.8 billion is for the developments projects.

From the published government documents available, it appears that Ksh11,801,180,000 was allocated to some projects already committed/implemented by the National Government. Between KSh722,160,000 (in the case of Lamu) and Ksh1,050,200,000 (in the case of Turkana) was allocated to various projects using the formula developed by the Commission for Revenue Allocation (CRA) for county allocations. These projects covered water activities (mainly municipal sewerage systems), health (including the construction of classrooms in Kenya Medical Training Centre, Garissa) and various roads.

The documents indicate that the *‘National Treasury has put in place the necessary administrative structures for appointment of the projects Administrator or necessary secondment of qualified officers to the Equalization Fund Secretariat to ensure its successful rollout in the fourteen marginalized counties’*. It is understood that a Department of Development of Arid and Semi-Arid Regions domiciled in the Executive Office of the President which is mandated with accelerating development activities in the Arid and Semi-Arid Regions coordinates the Equalisation Fund.

Finally a National Treasury document availed to the Members of Parliament indicates that: *‘The Equalization Fund will mainly focus on development programmes/projects in the marginalized counties to spur economic growth in those identified marginalized counties. It is, however, important to appreciate in the first year of roll-out of the Equalization Fund, that there may be additional administrative expenses relating to establishment and setting out systems for the fund roll-out, and development of necessary capacity at the National and Sub-National Levels regarding ways of financing projects, identification of projects through a consultative process in the marginalized counties and take care of initial Board expenses to enable the Board to guide the Secretariat more appropriately in the formative stages. It is, therefore, expected that the administrative costs shall be reduced to ensure prudent use of public resources going forward.’* It is, however, unclear how the Board’s recurrent grant towards administrative services and operational



activities that was estimated at Kshs.598.82 million was spent, especially given the projects were already undertaken within various ministries.

Public participation in the Fund

In December 2016, the Treasury put out advert in the national daily newspapers, seeking public participation from local leaders and citizens to ensure the projects submitted to the Equalization Fund Board were in line with the priorities detailed in annual county development plans and met the citizen needs. The International Budget partnership (IBP) provided a written response to this appeal on the need for the fund to focus on the needs of the marginalised areas, but IBP views were not accommodated.

Despite funds having been allocated in the budget estimates, Parliamentary approval was needed for an appropriation bill to allow for the withdrawn of funds. This was done on 8th April 2017 when the President signed the national budget appropriation bill along with the Equalization Fund appropriation bill for the expenditure of the Equalization Fund for the year ending on 30th June 2017.

The PPG actively engaged with both the National Treasury and budget committee to try and influence the process of the project identification. It organized a series of meetings with the National Treasury, the Budget committee members and elaborately participated in the County level public consultation exercises on project priority identification to ensure that the Equalization Funds used resources for the purpose the fund was established for. The PPG established a caucus under the leadership of Hon. Chachu Ganya, MP and Secretary-General of the PPG to closely monitor the implementation of approved county allocation by the Parliament and progress of the identified priority projects.

Concerns

Despite the intense effort by the PPG, the Equalisation Fund has suffered considerable delays in its allocation and still lacks clarity over the use of the administration expenses. The main concern is also whether the entire development funding of Equalization Fund is in fact any additional resources to reverse marginalization of the communities in the fourteen counties or is merely being used to reverse charges on already committed national level expenditures in the counties.

The second concern is the lack of proper public participation and transparency in the allocation and use of the funds. There was no known genuine public consultation on the Equalization Fund guidelines. The gazette notice mentions that consultation was carried out with stakeholders that mainly involved public officers like the CRA commissioners, controller of budget, members of parliament, county officials, and donors like IMF, World Bank etc. Despite the notice in national newspapers that was posted by the National Treasury, no proper consultation appears to have been done with potential beneficiaries of the Equalization Fund. Most of the marginalized areas are rarely reached by national newspapers; therefore, while the newspaper advert may fulfil a public notice requirements, it does not ensure that consultation with the marginalized communities can be achieved. There has also been no consultation with the citizens from the marginalised areas on what type of projects will be funded that can maximise impact on reducing marginalisation in their areas.

The President made a clear statement at the PLS conference that his administration would “*plan to continue exceeding the minimum requirement of allocation until it compensates for the time that has lapsed without the Equalization Fund.*” However the allocation still indicates a deficit in the allocation of funds to meet the minimum requirements. It is also not clear how this target can be realistically be achieved in future.

The third concern is about the lack of focus on the marginalised communities within the identified 14 counties that are targeted by the Equalization Fund, in order to ensure that tangible impacts are realized in bringing them to the



