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The Clerk
Kenya National Assembly
Parliament Buildings
P.O. Box 41842 – 00100
Nairobi, Kenya.

30TH November 2015

Cc: Hon. Moses Lesonnet
Chairperson
The Constituency Development Fund Committee
Kenya National Assembly
Parliament Buildings
P.O. Box 41842 - 00100
Nairobi, Kenya.

Dear Sir,

RE: Policy Brief on the National Government Constituency Development Fund Bill, 2015

In 2003, the Parliament of Kenya enacted the Constituencies Development Fund Act (CDF). The stated objective of the Act was to ensure that a portion of the annual government budget was set aside, and allocated to constituency-based projects. Parliament recognized that war against poverty needed to be taken to the grass root level through the implementation of community-based projects, and thus promoting public participation in development planning. This law was later repealed and in its place, the Constituency Development Fund Act of 2012 was enacted. The fund has been successful in promoting local development and has supported over 85,000 development projects in several sectors the key of which have been (55%), Health (6%) and Water (11%).

1.0 Implications of Petition 170 on CDF

On 20th February 2014 a high court ruling on petition 170 of 2013 declared the CDF unconstitutional and the act invalid. It gave the national government 12 months to align the fund with the constitution, failure to which it would be declared invalid. The following were the grounds on which the court declared CDF unconstitutional

- a) CDF offends the principles of public finance in the allocation of funds from revenue raised nationally.
- b) CDF violates the division of powers and functions

- c) CDF offends the doctrine of separation of powers
- d) CDF creates a parallel structure and fails to respect the structures of the county government
- e) The process of enactment failed to provide for Senate input

In this regard the National Assembly has prepared the **National Government Constituency Development Fund Bill, 2015**.

2.0 Alignment to PFMA Section 24

Section 24 of the Public Finance Management Act (2012) provides that the Cabinet Secretary Finance can establish a national fund. Section 207 of the PFM regulations gives conditions for the same. *At present the bill does not meet these requirements. We hereby make the following policy proposals:*

207(a) The fund be initiated through a proposal by the Cabinet Secretary responsible for the national government entity under which the functions of the Fund fall clearly setting out the justifications and submit it to the Cabinet Secretary of Finance;

The Bill designates the Cabinet secretary responsible for national economic policy and planning and development. This is an erroneous description as economic policy fall under the Treasury whereas planning and development falls under the Ministry of Planning and Devolution. *We propose the fund be designated to the Cabinet Secretary responsible for Ministry of Planning and Devolution.*

Sections 207(a,b,c) call for a justification for the fund with regard to why the services to be delivered through the fund cannot be delivered through the structure of the budget and why the fund structure is deemed appropriate for improved service delivery in light of the legislative and policy mandate of the national government entity:

3.0 Justification

CDF has emerged as a very popular fund because it gives citizen a direct role in their development. It has also been effective in redressing deficits in local infrastructure development. The fund will enable improved coordination between national government ministries in local service delivery. The fund provides for a community development framework for community driven decision making. The fund provides a transparency, accountability and public participation framework for the promotion of good governance. The bill seeks to foster a culture of collective action and mutual support to solve problems within a community. It will help local residents and stakeholder groups

- i. Define their national development priorities
- ii. Assist the NG in planning and prioritizing the use of their resources
- iii. Discuss and decide upon the most effective and efficient ways to achieve their development priorities
- iv. Participate in service delivery
- v. Build local accountability and transparency in the use of resources
- vi. Create a harmonious relationship between citizens and the NG and its officers
- vii. Establish ways of funding their development plans, at a group and individual level

4.0 Intergovernmental relations

The Fund will promote key IGR institutions: The Basic Education Act section 17 establishes the county education board and section 18 outlines its functions. The composition of the county education board is outlined in section 20 of the Act. The fund

will be empower the County Education Board by giving them a say in the approval of education projects and sub-county citizen nominees. **Section 41 of the Police Service Act establishes the County Policing Authority.** The role of County Policing Authority in community policing according to section 91 of the National Police Service Act.

5.0 Functions

In accordance with Article 186 and section 1 of the Fourth Schedule to the Constitution of, the national government functions referred to under subsection (1) to be implemented under this Act shall be–

- (a) primary, secondary and special education schools and tertiary education institutions;

A review of the budget votes for the 2015/16 budget demonstrates that there are no funds for local infrastructure development vote. We propose the fund to allocated to local education projects and bursaries.

Fourth Schedule Functions	Vote Head	Recurrent	Development	Fund accounts
15. Education policy, standards, curricula, examinations and the granting of university charter	Directorate of Policy, Partnership and East Africa Community	44,636,212	55,168,682	
	Directorate of Adult and Continuing Education	88,568,421	32,400,000	
	Board of Adult Education	661,500	-	
	National Council for Nomadic Education in Kenya (NACONEK)	40,000,000	-	
	Kenya National Commission for UNESCO & Commonwealth	321,822,341	23,000,000	
	Education Assessment and Resource Centre (EARC)	95,100,000	-	
	National Education Board	119,545,424	-	
	Kenya National Examination Council	2,203,000,000	420,000,000	
	Early Childhood Development Education (ECDE)	12,742,554	25,000,000	
	University Funding	40,000,000	-	

Board			
National Commission for Science Technology & innovation	770,809,170	415,400,000	
County Directors of TVET	108,040,500		
1062004100 Curriculum Development, Assessment and Certification Council	80,000,000	-	
Kenya Institute of Curriculum Development	1,003,724,604	282,600,000	
Directorate of Basic Education	14,605,311,728	18,003,608,275	
Directorate of Higher Education	54,880,330	140,000,000	
Directorate of Quality Assurance and standards	94,282,139	9,202,500	
TVET Authority	115,555,800	-	
Biosafety Appeals Board	15,000,000	-	
Commission for Universities Education	240,862,500	-	
Higher Education Loans Board (HELB)	4,990,055,500	-	
Directorate of Technical Education	3,000,000,000	384,855,567	
TVET Funding Board	15,000,000		
Teachers Service Commission	200,155,340,000	200,000,000	

(b) policing services.

Section 41 of the Police Service Act establishes the County Policing Authority, which plays a critical role in security and counter terrorism efforts. For instance the Budget Policy statement 2015/16 indicate that there is a security integrated infrastructure fund

set up in 2015/16 will finance the housing, office blocks and other installations for the National Police Service and other Uniformed Officers. Through is the National Youth Service (NYS) will construct 15,000 housing units for the National Police Service in 2015/16. There is however no allocation made to the County Policing Authorities and community policing. We recommend at least 40% of the fund be allocated to security.

7. Police services including	State department of interior -Vote 1021000100- 1021004400	68,649,982,239	12,590,834,556	
	Independent Police Oversight Authority	339,483,700	-	
a) The setting of standards for recruitment, training of police and use of police services	National Police Service Commission	316,500,000	-	
b) Criminal law; and				
c) Correctional Services	State department for coordination of national government -Vote 1022000100- 102201900	16,900,318,770	1,007,000,000	

(c) disaster management;

The national government has a mechanism and system for dealing with emergencies. County governments also have a emergency reserve. There is no justification for the national government to maintain an emergency reserve for each sub-county through fund.

24. Disaster Management	State department of devolution vote 1021006900- National Disaster operations	41,621,281	15,000,000	
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(d) promotion of sports and sports education;

The national budget makes considerable allocations to the promotion of sports. There is no justification for additional funding through the fund.

17. Promotion of sports and sports education	Ministry of sports, culture and the arts vote 1131003500	10,000,000	350,000,000	
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Wanjiru Gikonyo
National Coordinator



Sincerely,

It is our recommendation that the fund to allocated to education and security functions only for a period not exceeding 10 years. It will enable national government establish infrastructure to support education and security.

Conclusion

22. Protection of the environment and natural resources in particular	a. Fishing, hunting and gathering	State department for fisheries	1,368,536,694	2,139,232,762	
	b. Protection of animals and wildlife	State department of natural resources and environment	2,309,827,200	777,950,000	
State department of environment and natural resources	Ministry of mining	714,072,090	1,474,000,000		
	natural resources	4,513,358,490	138,126,481		Environmental Trust Fund-National
State department of environment and natural resources		5,255,920,173			

(e) protection of environment and natural resources; and
The national government has already made considerable investments in environment and national resources. There is no need for additional funding under the fund.

Kenya Academy of Sports	1131003600	Department of Sports	63,590,211	20,000,000	
	1131003700	National Sports Fund	10,000,000	180,000,000	National Sports Fund -
	1131003800	Sports Kenya	657,007,600	2,069,000,000	