



TISA STATEMENT ON THE WOMEN'S FUND (AASDF)

A CALL FOR THE TERMINATION OF AFFIRMATIVE ACTION FOR SOCIAL DEVELOPMENT FUND (AASDF)

27TH AUGUST 2015

The Institute for Social Accountability (TISA) is a civil society organization committed towards the achievement of sound policy and good governance in local development, to uplift livelihoods of, especially, the poor and marginalized in Kenya. TISA has been operational since March 2008, and is a locally registered Trust that has engaged with various relevant state and non-state actors in the quest to promote effective local governance in Kenya.

The Public Finance Management (Affirmative Action Social Development Fund) Regulations, 2015 came into law on March 11th 2015 through gazettelement by the Cabinet Secretary for National Treasury.

The 'Women's Fund' stated objective is ostensibly to offer social assistance to affirmative action groups as identified by Article 100 of the constitution. It is to be administered through the National Assembly.

TISA has filed a petition in the High Court of Kenya challenging the constitutionality of the fund on the following grounds:

1. The fund purports to compliment CDF, which was declared unconstitutional. TISA is of the opinion that the AASDF is an attempt to circumvent the court ruling.
2. The fund fails to align to principles of public finance management article 201 of the constitution. Regulation 4 fails to specify the source of monies for the fund and the role of the Commission for Revenue Allocation according to Article 216 of the Constitution.
3. AASDF effectively allows the Women Representatives to interfere with functions that are constitutionally assigned to the county governments contrary to Article 6 (2) and 186 of the Constitution. This arises from the fact that the Regulations, does not exclude functions of the county government, which are included in the County Integrated Development Plans; These include

promoting trade, construction of market sheds, lights and promotion of culture.

4. The fund has already been capitalized with (2,030,000,000 ksh) in the financial year 2014/15 and for financial year 2015/16. Membership of the board and the committee as provided for in the regulations increase the public wage bill, whereas regulation 13 on the creation of the emergency reserve duplicates existing emergencies funds at both the national and county level. This money should go towards catering for the 1.4 billion shortfall to pay teachers.
5. To the extent that Women Representatives are involved in the management of AASDF, and thus participating in identification and implementation of project, AASDF is offending the principle of separation of powers. Legislators are supposed to be making law, approving budgets, and exercising oversight. Identification and implementation of projects is a function that is exclusive to the executive.
6. Regulation 19 (12) projects are identified at the Constituency level and through the CIDP. The constituency is not a unit of county administration and as such, this can be construed to create a parallel and unconstitutional structure.
7. In addition to the above, the Constitution of Kenya, 2010 pronounces public participation is mandatory in the process of enacting laws (Article 118); the cabinet Secretary for National Treasury did not consult the people during the formulation of these Regulations.

It is for these same reasons that the CDF was declared unconstitutional and invalid. We condemn the impunity by the National Assembly in disregarding court rulings and replicated legislation which has been already declared unconstitutional by the courts.

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