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**THE NATIONAL GOVERNMENT CONSTITUENCIES
DEVELOPMENT FUND (AMENDMENT) BILL, 2023**

A Bill for

**AN ACT of Parliament to amend the National
Government Constituencies Development Fund
Act**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the National Government Constituencies Development Fund (Amendment) Act, 2023.

Short title.

2. Section 3 of the National Government Constituencies Development Fund Act (hereinafter referred to as “the principal Act”) is amended—

Amendment of section 3 of No. 30 of 2015.

(a) in paragraph (h) by deleting the word “specified” and substituting therefor the word “exclusive”; and

(b) in paragraph (k) by inserting the word “exclusive” immediately after the words “matters falling within the”.

3. Section 4 of the principal Act is amended by deleting subsection (3).

Amendment of section 4 of No. 30 of 2015.

4. Section 15 of the principal Act is amended—

Amendment of section 15 of No.30 of 2015.

(a) in subsection (1) (e) by inserting the words “in accordance with the recommendations of the Public Service Commission and” immediately after the word “Cabinet Secretary”;

(b) in subsection (2) by inserting the words “the Public Service Commission” immediately after the words “Cabinet Secretary”;

(c) by deleting sub-section (4).

5. The principal Act is amended by repealing section 19 and substituting therefor the following sections—

Repeal and replacement of section 19 of No.30 of 2015.

Vacancy

19. The office of the chairperson or member of the Board falls vacant if the holder—

- (a) dies;
- (b) resigns in writing, by a notice addressed to the Cabinet Secretary;
- (c) is convicted of a felony and sentenced to imprisonment;
- (d) is absent from three consecutive meetings of the Board without good cause;
- (e) is removed from office in accordance with the procedure set out in any written law.

Filling of vacancy

19A. (1) Whenever a vacancy arises in the Board, the Public Service Commission shall, within fourteen days—

- (a) invite applications from persons who qualify for nomination and appointment by advertisement in at least two daily newspapers with nationwide circulation;
- (b) consider the applications received to determine their compliance with the requirements set out in this Act;
- (c) shortlist the applicants;
- (d) conduct interviews for the shortlisted persons;
- (e) recommended three qualified persons for each vacancy to the Cabinet Secretary for nomination for appointment.

(2) The Cabinet Secretary shall within fourteen days of the receipt of the names of the persons recommended for nomination under sub-section 1(e), nominate one person for each vacancy and forward the names to the National Assembly for approval.

(3) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the name of an applicant under subsection (2), vet and consider the applicant, and may approve or reject applicants for any or all vacancies in the Board.

(4) Where the National Assembly Approves of an applicant, the Speaker of the National Assembly shall forward the name of the approved applicant to the Cabinet Secretary for appointment.

(5) The Cabinet Secretary shall, within seven days of receipt of the name of the approved applicant from the National Assembly, by notice in the Gazette appoint the applicant to the Board.

(6) Where the National Assembly rejects any nomination, the Speaker shall within three days communicate its decision to the Cabinet Secretary and request the Cabinet Secretary to submit fresh nominations.

(7) Where a nominee is rejected by the National Assembly under subsection (6), the Cabinet Secretary shall within seven days, submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the Public Service Commission under subsection (1)(e).

(8) If the National Assembly rejects any or all of the subsequent nominees submitted by the Cabinet Secretary for approval under subsection (1), the provisions of subsections (1) and (2) shall apply.

(9) In short listing, nominating or appointing persons to fill a vacancy in the Commission, the Public Service Commission, the National Assembly and the

Cabinet Secretary shall ensure that not more than two-thirds of the members are of the same gender.

6. The principal Act is amended by repealing section 24 and substituting therefor the following new section—

Repeal and replacement of section 24 of No. 30 of 2015.

Projects to be in respect of national government functions.

24. A project under this Act shall only be in respect of works and services falling within the exclusive functions of the national government as provided in the Constitution.

7. Section 25 of the principal Act is amended—

Amendment of section 25 of No. 30 of 2015.

(a) by deleting subsection (8); and

(b) by deleting subsection (10).

Amendment of section 34 of No. 30 of 2015.

8. Section 34 of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (b)—

(c) an amount that ensures that the total allocation to a constituency is not less than the amount allocated to the constituency in the preceding financial year;

9. Section 43 of the principal Act is amended—

Amendment of section 43 of No. 30 of 2015.

(a) in subsection (2)—

(i) by deleting the word “two” appearing in paragraph (b) and substituting therefor the word “three”;

(ii) by deleting the word “two” appearing in paragraph (c) and substituting therefor the word “three”;

(iii) by deleting paragraph (e).

(b) by deleting sub-section (6) and substituting therefor the following new sub-section—

(6) The first meeting of the Constituency Committee shall be convened by the officer of the Board seconded to the constituency within one hundred and twenty days from the date of the holding of a general election as contemplated in Article 101(1) of the Constitution.

(c) in subsection (8) by deleting the words “two years” and substituting therefor the words “three years”.

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| 52. | 10. The principal Act is amended by repealing section | Repeal of section 52 of No. 30 of 2015. |
| 53. | 11. The principal Act is amended by repealing section | Repeal of section 53 of No.30 of 2015 |
| 53A. | 12. The principal Act is amended by repealing section | Repeal of section 53A of No.30 of 2015 |
| | 13. Section 54 of the principal Act is amended by deleting subsection (2). | Amendment of section 54 of No. 30 of 2015
Consequential amendments |
| | 14. The consequential amendments set out in the Schedule to the Act shall take effect on the commencement date of this Act. | |

SCHEDULE

CONSEQUENTIAL AMENDMENTS

Act

Provision Amendment

National Government
Co-ordination Act,
No. 1 of 2013.

s.14(1) Insert the following new sub-section immediately after sub-section (1)-

(1A) Despite sub-section (1), all the constituencies established under Article 89 of the Constitution are hereby recognized and established as national government service delivery units.

s.14(4) Insert the word “constituencies” immediately after the words “For purposes of this section, the”.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the National Government Constituencies Development Fund Act, No. 30 of 2015 to provide that the projects that are to be undertaken under the Fund shall be projects that fall within the exclusive mandate of the national government. This is to align the Act with the Constitution on the distinct role and functions of the national and county governments and to avoid conflict between the two levels of government.

Clause 1 of the Bill provides for the short title of the Bill.

Clause 2 of the Bill provides for the amendment of section 3 of the Act to provide that the objects of the Fund shall be to facilitate the National Assembly to oversight and supplement infrastructure development over projects falling under the exclusive jurisdiction of the national government.

Clause 3 of the Bill provides for the deletion of section 4 subsection (3) to prevent situation where the collected government revenue is lower than the preceding year.

Clause 4 of the Bill provides for the amendment of section 15 of the Act to empower the Public Service Commission to make recommendations to the Cabinet Secretary on the persons to be appointed as members of the National Government Constituencies Development Fund Board established under section 14 of the Act.

Clause 5 of the Bill provides for the repeal of section 19 and replacing it with provisions that incorporate the Public Service Commission in the recruitment process of the Board members as contemplated under Article 234 of the Constitution.

Clause 6 of the Bill provides for the repeal and replacement of section 24 of the Act to provide that a project under this Act shall only be in respect of works and services falling within the exclusive functions of the national government under the Constitution and other enabling legislation.

Clause 7 of the Bill provides for deletion of section 25 subsections (8) and (10) of the Act to provide for the funding of projects falling under the exclusive jurisdiction of the national government.

Clause 8 of the Bill seeks to amend section 34(1) of the Act in order to ensure that the total amount of money allocated to a constituency is not less than the amount allocated to the constituency in the preceding financial year.

Clause 9 of the Bill provides for the amendment of section 43 subsection (2) to delete the provision enabling the constituency office to nominate two members of the National Government Constituencies Development Fund Committee and replace the same with two persons nominated in accordance with the Regulations in force.

Clause 10 of the Bill provides for the repeal of section 52 of the Act.

Clause 11 of the Bill provides for the repeal of section 53 of the Act.

Clause 12 of the Bill provides for repeal of section 53A of the Act, consequential to the repeal of section 52 of the Act.

Clause 13 of the Bill provides for deletion of section 54 subsection (2) of the Act to prevent duplication of subsection (1).

Clause 14 of the Bill provides for the Schedule which sets out the consequential amendments to the National Government Co-ordination Act, No. 1 of 2013 to ensure that constituencies are recognized as national government service delivery units.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers to the Cabinet Secretary. It also does not limit fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill does not concern county governments in terms of Article 109(5) of the Constitution as it does not contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 19th April, 2023.

KIMANI ICHUNGWAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of the Minority Party.

Section 3 of the Act which it is proposed to amend—

Objects of the Act

The objects of this Act are to—

- (a) provide for the establishment and administration of the Fund;
- (b) recognise the constituency as a platform for identification, performance and implementation of national government functions;
- (c) facilitate the performance and implementation of national government functions in all parts of the Republic pursuant to Article 6(3) of the Constitution;
- (d) provide for the participation of the people in the determination and implementation of identified national government development projects at the constituency level pursuant to Article 10(2)(a) of the Constitution;
- (e) promote the national values of human dignity, social justice, inclusiveness, equality, human rights, equity, non-discrimination and protection of the marginalized pursuant to Article 10 (2) (b) of the Constitution;
- (f) provide for the sustainable development of all parts of the Republic pursuant to Article 10(2) (d) of the Constitution;
- (g) provide a legislative and policy framework pursuant to Article 21 (2) of the Constitution for the progressive realization of the economic and social rights guaranteed under Article 43 of the Constitution;
- (h) provide mechanisms for the National Assembly to exercise oversight over the performance of specified national government functions at the constituency level as provided for under Article 95 of the Constitution;
- (i) deleted by Act No. 39 of 2016, s. 2;
- (j) authorize withdrawal of money from the Consolidated Fund as provided under Article 206 (2) (c) of the Constitution;
- (k) provide for mechanisms for supplementing infrastructure development at the constituency level in matters falling within the functions of the national government at that level in accordance with the Constitution;

- (l) provide a framework for citizens led development to assist the national government in planning and prioritizing the use of its resources;
- (m) create a harmonious relationship between citizens and the national government and its officers in local development;
- (n) provide a platform for citizens participation in service delivery;
- (o) build local accountability and transparency in the use of resources; and
- (p) provide for a public finance system that promotes an equitable society and in particular expenditure that promotes equitable development of the country by making special provisions for marginalized groups and areas pursuant to Article 201 (b) (iii) of the Constitution.

Section 4 of the Act which it is proposed to amend—

Establishment of the Fund

(1) There is established a fund to be known as the National Government Constituencies Development Fund which shall—

- (a) be a national government fund consisting of monies of an amount of not less than 2.5% (two and half percentum) of all the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution
- (b) comprise of any monies accruing to or received by the Board from any other source; and
- (c) be administered by the Board.

(2) All monies allocated under this Act shall be considered as funds allocated to constituencies pursuant to Article 206 (2) (c) of the Constitution to be administered in accordance with the provisions of this Act.

(3) The monies appropriated to the Fund in any financial year under subsection (1) (a) shall not be less than the amount appropriated to the Fund in the preceding financial year unless as otherwise allowed by this Act.

Section 15 of the Act which it is proposed to Amend—

Composition of the Board

(1) The Fund shall be administered by a Board of Directors which shall consist of—

- (a) the principal secretary in the Ministry for the time being responsible for matters relating to national economic policy and planning or a designated alternate, not being below the level of Director of Planning;
- (b) the principal secretary in the Ministry for the time being responsible for matters relating to finance or a designated alternate not being below the level of Deputy Director of Budget;
- (c) the Attorney-General or a designated alternate not being below the level of Senior State Counsel;
- (d) the principal secretary in the Ministry responsible for matters relating to education or a designated alternate not being below the level of Director;
- (e) seven other persons, three of whom shall be of the opposite gender and at least one shall be a person with disability, qualified in matters relating to finance, accounting, engineering, economics, community development, public affairs, project management, education, security or law appointed by the Cabinet Secretary with the approval of the National Assembly; and
- (f) the chief executive officer who shall be an ex-officio member without a right to vote.

(2) In nominating or approving the appointment of a person as a member of the Board under sub-section (1), the Cabinet Secretary and the National Assembly shall take into account gender equity and the regional diversities of the people of Kenya.

(3) The Cabinet Secretary shall appoint the chairperson of the Board from amongst the seven persons appointed in accordance with paragraph (e) of subsection (1).

(4) The names and curriculum vitae of the persons nominated to be appointed as members of the Board pursuant to paragraph (e) of subsection (1) shall, before appointments are made, be submitted to the National Assembly for approval.

Section 19 of the Act which it is proposed to repeal—

Removal of a member of the Board

(1) The office of a member of the Board for a member appointed under paragraphs (e) and (f) of section 15(1) shall become vacant if the member—

- (a) resigns by giving written notice to the Cabinet Secretary; or

(b) is removed from office on any one or more of the following grounds –

- (i) serious violation of the Constitution or any other law;
- (ii) gross misconduct, whether in performance of the member's or office holder's functions or otherwise;
- (iii) physical or mental incapacity to perform the functions of office;
- (iv) incompetence;
- (v) bankruptcy;
- (vi) engaging in active politics; or
- (vii) absence from three consecutive meetings of the Board without the permission of the Chairperson.

(2) A person desiring the removal of a member of the Board under subsection (1) may present a petition to the National Assembly Committee setting out the alleged facts constituting that ground.

(3) A member sought to be removed under subsection (1) shall be given a fair hearing before a decision is made by the National Assembly Committee.

(4) The National Assembly Committee shall, upon receiving a petition under subsection (2), consider the petition and may recommend that the member be suspended pending the outcome of the complaint.

(5) The National Assembly Committee shall consider the petition and if it is satisfied that it discloses a ground under subsection (1), it shall make a determination that the member be removed from office and the member shall stand removed from office upon the making of that determination.

(6) A vacancy arising as a result of the removal of a member under subsection (5) shall be filled in the manner set out in section 15 within thirty days of the occurrence of the vacancy.

Section 24 of the Act which it is proposed to amend—

Projects to be in respect of national government functions

A Project under this Act shall—

- (a) only be in respect of works and services falling within the functions of the national government under the Constitution; and

- (b) be community based in order to ensure that the benefits are available to a widespread cross-section of the inhabitants of a particular area.

Section 25 of the Act which it is proposed to amend—

Funding of projects

(1) Any funding under this Act shall be for a complete project or a defined phase of a project and may include the acquisition of land and buildings.

(2) All projects shall be projects as defined under this Act and may include costs related to studies, planning and design or other technical input for the project but shall not include recurrent costs of a facility.

(3) Funds provided under this Act shall not be used for the purpose of supporting political bodies or political activities or for supporting religious bodies or religious activities.

(4) Notwithstanding the provisions of subsection (3), the Constituency Committee may identify a religious body or organization as an appropriate specialized agency for purposes of section 8 with regard to emergency support.

(5) Constituency Committee office project shall be considered as a development project for purposes of the Act and may include appropriate furniture and equipment for the office.

(6) Notwithstanding the provisions of subsection (2), up to a maximum of six per centum of the total annual allocation for the constituency may be used for administration, recurrent expenses of vehicles, equipment and machinery and such use shall be listed in the Third Schedule as a project.

(7) Projects may include the acquisition of vehicles, machinery and other equipment for the constituency.

(8) Sports activities shall be considered as development projects for purposes of this Act but shall exclude cash awards provided that the allocation to such activities does not exceed two per centum of the total allocation of the constituency in that financial year.

(9) Monitoring and evaluation of ongoing projects and capacity building of various operatives may be considered as a development project provided that not more than three per centum shall be allocated for this purpose.

(10) Environmental activities may be considered as development projects for purposes of this Act provided that the allocation to such

activities does not exceed two per centum of the total allocation of the constituency in that financial year.

(11) Each of the projects shall be listed in the Third Schedule including the emergency item under section 8 and, where applicable, the activities under subsections (5), (6), (7), (8), (9) and (10) of this section.

Section 34 of the Act which it is proposed to amend—

34. Basis for budget ceiling

(1) The budget ceiling for each constituency shall be—

- (a) three quarters of the amount specified in section 4 (1) divided equally among all constituencies;
- (b) an amount equal to a quarter of the amount specified in section 4 (1) divided among all constituencies taking into account the number of wards in each constituency; and
- (c) subject to the provisions of section 8 (1) and section 23 (1).

(2) The Chairperson of the National Assembly Committee shall table in the National Assembly a schedule showing the ceiling for each constituency, which shall be determined in accordance with subsection (1).

(3) Despite subsection (1), the National Government may, through the National Government Constituency Development Fund Committees established under section 43, where necessary, facilitate other projects or programmes falling within the purview of the National Government with funds other than the funds specified in section 4 (1).

Section 43 of the Act which it is proposed to amend—

National Government Constituency Development Fund Committee

(1) There is established a National Government Constituency Development Fund Committee for every constituency.

(2) Each Constituency Committee shall comprise of—

- (a) the national government official responsible for co-ordination of national government functions;
- (b) two men each nominated in accordance with subsection (3), one of whom shall be a youth at the date of appointment;
- (c) two women nominated in accordance with subsection (3), one of whom shall be a youth at the date of appointment;

- (d) one person with disability nominated by a registered group representing persons with disabilities in the constituency in accordance with subsection (3);
- (e) two persons nominated by the constituency office established under Regulations made pursuant to the Parliamentary Service Act;
- (f) the officer of the Board seconded to the Constituency Committee by the Board who shall be an ex officio member without a vote.
- (g) one member co-opted by the Board in accordance with Regulations made by the Board.

(3) The seven persons referred to in subsection (2)(b), (c), (d) and (e) shall be selected in such manner and shall have such qualifications as the Board may, by Regulations, prescribe.

(4) The names of the persons selected under subsection (3) shall be submitted by the Board to the National Assembly for approval before appointment and gazettelement by the Board.

(5) The Regulations made under subsection (3) shall be submitted to the National Assembly for approval before publication by the Board.

(6) The first meeting of the Constituency Committee shall be convened within one hundred and twenty days of the commencement of a new term of Parliament or the date of the holding of a by-election, by the national government official at the constituency or in his or her absence, by an officer of the Board seconded to the constituency.

(7) The quorum of the Constituency Committee shall be one half of the total membership.

(8) The term of office of the members of the Constituency Committee shall be two years and shall be renewable but shall expire upon the appointment of a new Constituency Committee in the manner provided for in the Act, or as may be approved by the Board.

(9) The Fund account manager seconded by the Board to the constituency shall be the custodian of all records and equipment of the constituency during the term of Parliament and during transitions occasioned by general elections or a by-election.

(10) Whenever a vacancy occurs in the Constituency Committee by reason of resignation, incapacitation or demise of a member the vacancy shall be filled from the same category of persons where the vacancy has occurred within a period of one hundred and twenty days.

(11) The Constituency Committee shall meet at least six times in a year but the committee shall not hold more than twenty-four meetings in the same financial year, including sub-committee meetings.

(12) *deleted by Act No. 24 of 2022, s. 16 (c).*

(13) A member of the Constituency Committee may be removed from office on any one or more of the following grounds—

- (a) lack of integrity;
- (b) gross misconduct;
- (c) embezzlement of public funds;
- (d) bringing the committee into disrepute through unbecoming personal public conduct;
- (e) promoting unethical practices;
- (f) causing disharmony within the committee;
- (g) physical or mental infirmity.

(14) A decision to remove a member under subsection (13) shall be made through a resolution of at least five members of the Committee and the member sought to be removed shall be given a fair hearing before the resolution is made.

(15) A vacancy arising as a result of the removal of a member under subsection (13) shall be filled in the manner set out in subsection (10) and minutes of the meeting shall indicate the fact of the removal or appointment of a member.

Section 52 of the Act which it is proposed to amend—

Allocations under the Act are supplementary

The existence of another allocation by the national government to a project in the constituency or a neighboring Constituency shall not be used as a reason to deny either approval or funding of any project consistent with this Act.

Section 53 of the Act which it is proposed to repeal—

Constituency Oversight Committee

(1) There is established a Constituency Oversight Committee for projects undertaken under this Act.

(2) The Constituency Oversight Committee shall be comprised of the constituency member of the National Assembly and not more than four

other members, appointed by the Member of National Assembly for the constituency in consultation with other stakeholders.

(3) The constituency Member of National Assembly shall, in consultation with the Constituency Oversight Committee at least twice in every financial year, and upon giving notice of at least fourteen days, convene public forums for purposes of—

- (a) mobilizing and sensitizing the respective target groups on any matter related to the Fund; and
 - (b) soliciting views, opinions and proposals from the public in regard to the Fund and presenting the views and opinions to the National Assembly.
- (4) The public may in the public forums above—
- (a) make recommendations to the Constituency Committee for the better implementation of projects undertaken under the Act;
 - (b) witness the commissioning of projects and issuance of cheques and other disbursements by the Constituency Committee; and
 - (c) express their views on the implementation of the Fund.

(5) A member of the Constituency Oversight Committee may attend meetings of the Constituency Committee or its sub-committees, to ensure fair distribution of the fund.

Section 53A of the Act which it is proposed to repeal-

Facilitation of Constituency Oversight Committee

In discharging its obligations, the Constituency Oversight Committee shall be facilitated by funds set aside by the constituency, provided that such allocation does not exceed one per centum of the total allocation of the constituency in that financial year.

Section 54 of the Act which it is proposed to amend—

Provisions in the Act are complimentary

(1) The provisions of this Act shall be complimentary to any other development efforts by the national government or any other agency and nothing in this Act shall be taken or interpreted to mean that an area may be excluded from any other development programmes.

(2) For the avoidance of doubt, normal Government development allocations shall continue alongside the projects funded under this Act.

