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THE CONSTITUENCIES DEVELOPMENT FUND ACT, 2013

No. 30 of 2013

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THE CONSTITUENCIES DEVELOPMENT FUND ACT, 2013

AN ACT of Parliament to repeal and replace the Constituencies Development Fund Act, 2007

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Constituencies Development Fund Act, 2013, and shall come into operation immediately after the first elections for Parliament under the Constitution.

Interpretation.

2. In this Act, unless the context otherwise requires, -

"Board" means the Constituencies Development Fund Board established by section 4

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to the Constituencies Development Fund;

"Chairperson" means the Chairperson of the Board appointed under section 5(4);

"Chief Executive Officer" means the Chief Executive Officer of the Board appointed under section 8;

"community" means residents of a particular geographical area or region defined as a constituency, location, sub location or village and having common interests;

"constituency" has the meaning assigned to it in the Elections Act, 2011;

"Constituency Development Fund Committee" means the committee established under section 24;

"Constituency Fund Account" means the account maintained for every constituency in accordance with section 46;

"County Projects Committee" means the committee established under section 36;

"Fund" means the Constituencies Development Fund established under section 4;

"National Account" means the Constituencies Development Fund account maintained under section 43";

"Officer of the Board" means an officer of the Board appointed under section 41;

"Parliamentary Committee" means a Parliamentary Committee established in accordance with section 28:

."project" means an eligible development project as described in the Act;

"project management committee" means a committee or board of persons elected or nominated to implement a project or manage an institution, including a committee existing prior to the establishment of the Fund and which is assuming the responsibility of implementing a project funded under the Act;

"sub-project" means a complete unit or part of a project that can be put to use towards the achievement of the project objectives;

"youth" means a person who has attained the age of eighteen years but has not attained the age of thirty five years.

Object and purpose of Act.

3. The provisions of this Act shall apply, as more specifically provided for in the Act, and shall ensure that a specific portion of the national annual budget is devoted to the constituencies for purposes of infrastructural development, wealth creation and in the fight against poverty at the constituency level.

PART II-ESTABLISHMENT OF THE CONSTITUENCIES DEVELOPMENT FUND

Establishment of the Fund.

4. (1) There is established a fund to be known as the Constituencies Development Fund which shall-

(a) be a national fund consisting of moneys of an amount of not less than 2.5% (two and half per centum) of all the national government ordinary revenue collected in every financial year;

(b) comprise of any moneys accruing to or received by the Board from any other

source;

(c) disbursed by the national government through the Board to constituencies as a grant to be channelled to constituencies in the manner provided for by this Act ;

(d) be administered by the Board;

(2) All moneys allocated under this Act is additional evenue to the county governments under Article 202 (2) of he Constitution to be administered according to section 5.

(3) The Fund established under this section shall be he successor to the Constituencies Development Fund stablished by section 4 of the Constituencies Development und Act, 2003

Establishment of the Board

5. (1) There is established a Board to be known as the Constituencies Development Fund Board.

(2) The Board shall be administered by a Board of Directors which shall consist of-

(a) the principal secretary in the State Department relating to economic planning or a designated alternate, not being below the level of Director of Planning;

(b) the principal secretary in the State Department 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 his designated alternate not below the level of Senior State Counsel;

(d) four persons, qualified in matters relating to finance, accounting, engineering, economics, community development, or law, appointed by the Cabinet Secretary in accordance with subsection (5) taking into account regional, ethnic and gender balance as per the Constitution of Kenya;

(e) two persons qualified in accordance with paragraph (d) appointed by the Cabinet Secretary to remedy any regional imbalance that may have occurred during nomination under

subsection (5);

(f) the Chief Executive Officer who shall be an ex-officio member;

(g) the corporation secretary who shall be appointed by the Board and shall be the secretary to the Board.

(3) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of-

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

(c) borrowing money or making investments; and

(d) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(4) The Cabinet Secretary shall appoint the Chairperson of the Board from amongst the four persons appointed in accordance with paragraph (d) of subsection (2).

(5) The names and curriculum vitae of the persons nominated to be appointed as members of the Board pursuant to paragraph (d) of subsection (2) shall be submitted to Parliament for approval before appointments are made.

Functions of the Board

6. (1) The functions of the Board shall be to -

(a) to ensure timely and efficient disbursement of funds to every constituency;

(b) to ensure efficient management of the Fund;

(c) to receive and discuss annual reports and returns from the constituencies;

(d) ensure the compilation of proper records, returns and reports from the constituencies;

(e) receive and address complaints and

disputes and take any appropriate action;

(f) consider project proposals submitted from various constituencies in accordance with the Act, approve for funding those projects proposals that are consistent with this Act and send funds to the respective constituency fund account of the approved projects;

(g) perform such other duties as the Board may deem necessary from time to time for the proper management of the Fund.

(2) Where any issues of policy arise in the course of the performance of its functions under this Act, the Board shall refer the same to the Cabinet Secretary.

Conduct of business and affairs of the Board.

7. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Fourth Schedule.

(2) Except as provided in the Fourth Schedule, the Board may regulate its own procedure.

hief Executive fficer of the Board

8. (1) There shall be a Chief Executive Officer of the Board who shall be recruited by the Board on a competitive basis and recommendations made to the Cabinet Secretary for appointment, with the approval of the Parliamentary Committee.

(2) No person shall be appointed under this section unless such person-

(a) has a university degree in finance, accounting, engineering, economics, community development, law or a related field from a recognized university;

(b) has at least five years' working experience in the relevant field.

(3) The Chief Executive Officer shall subject to the directions of the Board, be responsible for the day to day management of the affairs and staff of the Board.

(4) The chief executive officer shall serve for a renewable term of five years.

Disbursement from the Fund

9. (1) Each and every disbursement from the Fund shall

be approved and minuted by the Board.

(2) All disbursements from the Fund shall be for specific projects as submitted by the constituencies in accordance with the procedures outlines in this Act.

(3) All disbursements shall be made through the constituency bank accounts maintained for every constituency in accordance with section 42 of the Act.

(4) Notwithstanding the provisions of subsection (3), payments for a joint project as outlined in section 23 (4) or a joint procurement, may be made directly to a supplier or to an account established for the purpose with due approval of the Board.

(5) The record of the amounts received by each constituency and the record of expenditure of amounts so received shall be submitted to the Board within thirty days after the close of the relevant financial year together with a copy of the relevant bank statements and no disbursements for the succeeding financial year shall be made into the accounts until the said records are duly received

(6) The Board shall set out general conditions and requirements for release of funds, to ensure efficient and effective management of resources.

(7) The Board may impose reasonable requirements, including restrictions, on a particular constituency and such restrictions or requirements shall be reported together with the monthly returns to be submitted to the Cabinet Secretary in accordance with this Act.

Allocation of funds

10. (1) The Cabinet Secretary, with the concurrence of the relevant Parliamentary Committee, shall for each financial year allocate funds to each constituency in accordance with section 20.

(2) Once funds are allocated for a particular project, they shall remain allocated for that project and may only be re-allocated for any other purpose during the financial year with the approval of the Board.

(3) If for any reason a particular project is cancelled or discontinued during the financial year, funds allocated for such a project shall be returned to the Fund

and credited to the account of the constituency from which the funds were withdrawn.

(4) Unspent funds shall be allocated to any eligible project and such project may be new or ongoing at the end of the financial year.

(5) For the avoidance of doubt, a return as set out in the Third Schedule shall be made for the current financial year and every previous financial year on which some funds remain unspent.

Funds to be retained in the Fund.

11. (1) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be returned to the Fund and applied in accordance with section 10 (5) of this Act.

(2) All funds allocated to a constituency shall be cumulative and shall be carried forward from one financial year to the next, including funds returned into the accounts in accordance with section 10(3) or funds which are not utilized for whatever reasons.

Emergency reserve.

12. (1) A portion of the Fund, equivalent to five per centum (hereinafter referred to as the "Emergency Reserve") shall remain unallocated and shall be available for emergencies that may occur within the Constituency.

(2) The Constituency Development Fund Committee shall determine the allocation of the emergency reserve in accordance with the Act.

(3) "Emergency" shall be construed to mean an urgent, unforeseen need for expenditure for which it is in the opinion of the committee that it cannot be delayed until the next financial year without harming the public interest of the constituents.

(4) For each project, the Project Management Committee shall set aside a sum of five per centum of the total allocation for the project to cater for the administration expenses of the project.

(5) The sum set aside under subsection (4) shall be properly accounted for and proper books of accounts kept and returns made to the Constituencies Development Fund Committee for that constituency on how the sum has been used.

PART III - SUBMISSION OF CONSTITUENCY PROJECT PROPOSALS

Submission of projects.

13. (1) The list of proposed constituency based projects to be covered under this Act shall be submitted by the chairman of the Constituency Development Fund Committee to the Board after approval by the Constituency Development Fund Committee for that constituency

(2) The Board shall receive and compile the list of proposed constituency projects submitted to it under this Act and submit it to the Parliamentary Committee for approval.

Submission deadline

14. (1) The list of the proposed constituency projects shall be submitted to the Board before the end of the month of February in each year or such other month as may be determined by the Cabinet Secretary in order to ensure timely inclusion of the projects in the annual Government budget of a particular financial year.

(2) Where the chairman of the Constituency Development Fund Committee fails to submit the list of constituency based projects to the Board within the stipulated time in subsection (1), the list shall be deemed to have been submitted to the Board upon the lapse of the stipulated time

Submission Form

15. (1) The list of projects shall be submitted on a Constituency Projects Submission Form set out in the First Schedule to this Act accompanied by minutes of the Constituency Development Fund Committee approving the projects.

(2) All projects proposed for every constituency shall be listed in the Form together with the cost estimates, amounts allocated and amounts disbursed to such projects.

Projects description Form

16. For every project listed in the Form, there shall be attached a Project Description Form set out in the Second Schedule.

Approval of projects.

17. (1) The list of projects received by the Board pursuant to section 13 shall be tabled for review at a meeting of the Board.

(2) The Board shall scrutinize and approve for funding those projectproposals that are consistent with

the Act.

(3) Where the Board does not approve a proposal submitted to it under this section, it shall refer the matter to the Constituencies Development Fund Committee giving reasons as to why it has declined the proposal.

Discretion of Constituency Development Fund Committee.

18. The allocation of funds to various projects in each constituency is the responsibility of the Constituency Development Fund Committee to be exercised at its own discretion within the provisions of this Act.

List to be serialized.

19. The projects listed for each constituency shall be numbered by the Board and the serial numbers of all projects in a constituency shall bear the number of the constituency as delineated by the Independent Electoral and Boundaries Commission in order to ensure that a project retains the same serial number every year until its completion.

Basis for budget ceiling.

20. (1) The budget ceiling for each constituency shall be determined in accordance with the basis for allocating resources among counties approved by Parliament pursuant to Article 217 of the Constitution.

(2) Further to subsection (1), the budget ceiling for each constituency shall be determined by the Cabinet Secretary in consultation with the Joint Committee and shall be submitted to Parliament for approval.

(3)The Chair of a Committee of the National Assembly shall table in Parliament a schedule showing the ceiling for each constituency, which shall be determined in accordance with sub section (1).

Criteria for Projects.

21.(1) The types of projects submitted for funding under this Act shall comply with the provisions of this Act.

(2) It shall be the responsibility of the Constituency Development Fund Committee to ensure that the list of projects submitted for funding comply with the provisions of the Act and their total cost does not exceed the allowable ceiling for the particular constituency or is not below that ceiling.

(3) If the list of projects submitted for funding is in

contravention of subsection (2) the same shall be referred back to the Constituency Development Fund Committee for amendment and re-submission.

(4) Whenever the amount for projects in a constituency is less than the allowable ceiling for reasons of projects being deleted in accordance with sub-section (3), or for whatever reason, the shortfall shall be indicated as unallocated amount against that particular constituency on the list to be forwarded to the Cabinet Secretary.

PART IV - TYPES OF PROJECTS

Projects to be community based.

22.(1) Projects under this Act shall be community based in order to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants of a particular area.

(2) 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.

(3) 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.

(4) 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.

(5) Notwithstanding the provisions of subsection (4), the Constituency Development Fund Committee may identify a religious body or organization as an appropriate specialized agency for purposes of section 12 with regard to emergency support.

(6) A Constituency Development Fund 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.

(7) Notwithstanding the provisions of subsection (3), 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 First Schedule as a project.

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

(9) 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.

(10) 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.

(11) 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.

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

Number of projects

23. (1) The number of projects to be included in the Constituency Projects Submission Form specified in the First Schedule shall be a minimum of five and a maximum of twenty five for every constituency in each financial year.

(2) Constituencies with unspent funds at the end of the financial year shall submit new proposals to the Board for approval in accordance with section 10(5) of this Act.

(3) Project activities of a similar nature in a particular constituency may be combined and considered as one project for purposes of subsection (1) provided that the sub projects are listed in the Second Schedule.

(4) Constituencies may pool resources for joint projects provided that the decision for such joint projects shall first be approved by the Constituency Development Fund Committee of each of the participating constituencies and shall be reflected on the projects listed for each of the

participating constituencies.

(5) Where constituencies have joint projects, the County Projects Committee shall co-ordinate such projects.

Composition of the Constituency Development Fund Committee

24.(1) There shall be a Constituency Development Fund Committee for every constituency.

(2) Each Constituency Development Fund Committee shall comprise-

(a) the national government official at the constituency as may be designated by the Cabinet Secretary or an alternate;

(b) three men nominated by the ward development committees and one of whom shall be a youth at the date of appointment;

(c) three women nominated by the ward development committees and one of whom is a youth shall be a youth at the date of appointment;

(d) one person with disability nominated by the ward development committees;

(e) one person nominated from among the active Non-Governmental Organisations in the constituency;

(f) an officer of the Board seconded to the Constituency Development Fund Committee by the Board who shall be ex-officio and shall serve as the secretary to the Constituency Development Fund Committee.

(3) The eight persons referred to in subsection (2) (b), (c), (d) and (e) shall be nominated through the following procedure-

(a) within forty-five days of being sworn in, each Member of Parliament for a particular constituency shall convene open public meetings of registered voters in each of the elective wards in the constituency;

(b) each ward shall then elect five persons whose names shall be forwarded to the officer of the Board in the constituency;

(c) upon receiving the names from all the wards in the constituency, the Member of Parliament in consultation with the officer of the Board and the sub county administrator for the constituency, shall appoint eight persons to the Board, taking into account the geographical diversity within the constituency, communal, religious, social and cultural interests in the constituency and the requirements of gender, youth and representation of persons with disabilities;

(d) the eight persons appointed under subparagraph (c) shall elect from among themselves one person to be the chairperson of the Constituencies Development Fund Committee for the constituency;

(e) upon conclusion of the election of the chairperson in the manner stipulated in paragraph (d), the officer of the Board shall forward the names of the ten members of the Constituencies Development Fund Committee to the chief executive officer of the Board for onward transmission to the Cabinet Secretary for gazettement;

(f) The Member of Parliament for the constituency shall be an ex-officio member of the Committee.

(4) The Cabinet Secretary shall cause the names of persons appointed as members of the Constituencies Development Fund Committee, pursuant to sub-section (2) to be published in the Kenya Gazette.

(5) The first meeting of the Constituency Development

Fund Committee shall be convened within the first sixty days of a new Parliament or 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, on such day as may be designated by the Cabinet Secretary.

(6) The Chairperson of the Constituency Development Fund Committee in consultation with the Member of Parliament for the Constituency, the sub-county administrator for the Constituency, and the ward administrator for every ward shall, within the first year of a new parliament and at least once every two years thereafter, convene open forum public meetings at in every ward in the constituency to deliberate on development matters in the ward and the constituency.

(7) Each ward shall come up with a list of priority projects to be submitted to the Constituency Development Fund Committee

(8) The quorum of the Constituency Development Committees shall be one half of the total membership.

(9) The term of office of the members of the Constituency Development Fund committee shall be three years irrespective of a parliamentary term but shall be renewable and shall come to an end upon the appointment of a new Constituency Development Fund Committee in a manner provided in this Act.

(10) 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.

(11) Whenever a vacancy occurs in the Constituency Development Fund Committee by reason of resignation, incapacitation or demise of a member then the vacancy shall be filled from the same category of persons where the vacancy has occurred.

(12) The Constituency Development Fund Committee shall meet at least six times in a year and not more than twenty four times in every financial year including sub-

committee meetings

(13) The Constituency Development Fund Committee shall, at its discretion, determine the quantum of installments to various projects in the constituency, taking into account the disbursement received and the requirement of different projects.

(14) A member of the committee may be removed on any one or more of the following grounds-

(a) lack of integrity;

(b) gross misconduct;

(c) embezzlement of public funds;

(d) bringing the image of the committee into disrepute through unbecoming personal public conduct;

(e) promoting unethical practices;

(f) causing disharmony within the committee;

(g) physical or mental infirmity.

(15) A decision to remove a member under subsection (14) 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.

(16) A vacancy arising as a result of the removal of a member under subsection (14) shall be filled in the manner set out in subsection (11) and minutes of the meeting shall indicate the fact of the removal or appointment of a member.

(17) The committee may employ staff, not exceeding five in number, and such staff shall have knowledge in information and communications technology, construction and basic accounting.

(18) Staff employed under subsection (17) shall help in project monitoring evaluation, co-ordination and proper keeping of records and such staff shall be remunerated from the funds allocated for administration and recurrent expenses.

Cost estimates to be realistic.

25. (1) The Constituency Development Fund Committee may make appropriate consultations with the relevant Government departments is done to ensure

that cost estimates for the projects are as realistic as possible.

(2) The Constituency Development Fund Committee shall rank the projects in order of priority and whenever, in the opinion of the Board, the total cost of the projects listed exceed the ceiling for a particular constituency, then the order in which they are listed shall be taken as the order of priority for purposes of allocation of funds, provided that on-going projects shall take precedence over all other projects.

Personal awards to be excluded.

26. (1) A project or any part thereof which involve personal awards to any person in cash or in kind, shall be excluded from the list of projects submitted in accordance with section 13 of the Act.

(2) Notwithstanding the provisions of subsection (1), an education bursary scheme, mocks and continuous assessment tests shall be considered as a development project for purposes of the Act provided that such a project shall not be allocated more than twenty five per centum (25%) of the total funds allocated for the constituency in any financial year.

Counter-part funding to be permitted.

27. For the purposes of this Act, the Board may consider part funding of a project financed from sources other than the Fund so long as the other financiers or donors of that project have no objection and provided that the part funding for the project availed pursuant to this Act shall go to a defined unit or any part thereof or phase of the project in order to ensure that the particular portion defined in the allocation is completed with the funds allocated under this Act.

PART V – NATIONAL ASSEMBLY COMMITTEE ON CONSTITUENCY DEVELOPMENT FUND

Establishment of the National Assembly Select Committee.

28. (1) The National Assembly shall, in accordance with its Standing Orders, establish a Select Committee consisting of a chairperson and not more than ten other members of the National Assembly.

(2) In determining the membership of the National Assembly Select Committee, the National Assembly shall ensure proportionate representation of the

Parliamentary Political Parties.

(3) The term of office of the members of the National Assembly Select Committee shall be three years renewable or upon the appointment of a new committee in a manner provided for in this Act, whichever comes earlier.

(4) The procedures and rules for the operations of the National Assembly Committee shall be governed by the Standing Orders of the National Assembly.

(5) The functions of the National Assembly Select Committee shall be –

(a) to consider and recommend to the National Assembly any matter requiring action by the National Assembly pursuant to the provisions of this Act;

(b) to oversee the implementation of this Act and in this respect, shall after every two years submit a report to the National Assembly and where necessary, propose any amendments to this Act, in particular, with respect to the quantum of funds repayable into the Fund in accordance with section 4 of the Act;

(c) to oversee the policy framework and legislative matters that may arise in relation to the Fund;

(d) to continually review the framework set out for the efficient delivery of development programmes financed through the Fund;

(e) to consider and report to Parliament with recommendations, names of persons required to be approved by Parliament under this Act; and

(f) to carry out any other functions relevant to the work of the Fund.

(6) The Committee may make reports other than the statutory report stated in sub section 5(b) to appraise the National Assembly on various matters relating to the

Fund and to seek various approvals as required by the Act

Quarterly reports on projects and disbursements.

29. The Board shall, on a monthly basis, submit a report to the National Assembly Select Committee detailing-

(a) a summary of the project proposals received from the constituencies in the preceding month and indicating the approval status of such projects;

(b) a summary of the status of disbursements of funds to the constituencies for that preceding month

(c) a summary of the status of disbursements from the Treasury to the National Account; and

(d) any restriction imposed on a constituency account in accordance with the Act.

Projects.

30. The Board shall ensure that the list of projects forwarded to it by each constituency is, upon approval, funded in accordance with the Act.

PART VI – IMPLEMENTATION OF PROJECTS.

Project Management Committee to implement.

31.(1) Projects under this Act shall be implemented by the project management committee in each case, with the assistance of the relevant department of Government and all payments through cheques or otherwise shall be processed and effected in accordance with government regulations for the time being in force.

(2) Where a project in a constituency involves the purchase of equipment, such equipment shall remain for the exclusive use of that constituency.

(3) The Constituency Development Fund Committee and the Board shall be responsible for monitoring the implementation of projects and may designate a sub-committee, a ward committee or a project committee, the functions of monitoring an on-going projects and shall submit a report on the ongoing projects to the ward administrator and sub-county administrator, and the County Projects Committee.

(4) All fixed and movable assets, including equipment bought under this Act for use by the Constituency Development Fund Committee shall be the property of the Board to be insured in the name of the Board.

(5) No asset or equipment acquired under this section shall be disposed of without the prior approval of the Board.

(6) Any proceeds that may accrue from the disposal of any asset acquired pursuant to subsection (5) shall be credited to the account of the constituency from whose funds the asset was acquired and such funds shall be reflected and declared as part of the following years constituency fund for that constituency.

Procurement of ervices and Works

32. (1) All works and services relating to projects under this Act shall be procured in accordance with the provisions of the Public Procurement and Disposals Act 2005.

Record of receipts and disbursement

33. The officer of the Board in every constituency shall compile and maintain a record showing all receipts, disbursements and actual expenditures on a monthly basis in respect of every project and sub-project under this Act and shall-

(a) table such record at a meeting of the Constituency Development Fund Committee in every month ; and

(b) submit a summary of the record for the year to the Constituency Development Fund Committee not later than thirty days after the end of every financial year.

Audit.

34. All funds received under this Act shall be audited and reported upon by the Auditor- General.

Community Initiatives to be eligible

35. (1) Projects initiated by a community shall be eligible for support under this Act provided that such projects shall be submitted with the other projects in conformity with the requirements of this Act.

(2) Pursuant to subsection (1), a community shall, maintain an elected committee to represent the interests

of that community during and after the implementation of the project and such a committee shall conform with the requirements of this Act.

PART VII - COUNTY PROJECTS COMMITTEE

Establishment o County Project Committee.

36. (1) There shall be established, for every county a committee to be known as County Projects Committee whose main function shall be to coordinate the implementation of projects financed through the Fund.

(2) The County Projects Committee may, in the discharge of its functions under this Act, make official or impromptu visits to projects at such times, as it may deem appropriate.

Membership.

37. (1) The members of the County Projects Committee shall be –

(a) the Senator, the Members of Parliament from the County, the county women representative and the Governor;

(b) the national government official at the county;

(c) the Chairpersons of the Constituencies Development Fund Committees in that county

(d) the officer in charge of the county treasury;

(e) the officer in charge of county planning;

(f) an officer of the Board seconded to the County Projects Committee by the Board who shall be ex-officio and shall serve as the Secretary to the County Projects Committee.

(2) All county departmental heads in a county under whose docket the various projects fall may attend County Projects Committee meetings as ex-officio members, at the invitation of the County Projects Committee.

(3) The County Projects Committee shall elect a chairperson from amongst the members of the Committee who shall serve for a term of three years or subject to regulations under this Act.

(4) The quorum for any meeting of the County

Projects Committee shall be one half of the members and for the purposes of this section immediate past members shall remain members of the County Projects Committee until a new County Projects Committee is convened pursuant to the provisions of subsection (7)

(5) Meetings of the County Projects Committee shall be held at the county headquarters at least two (2) times in a year and not more than four times in every financial year including sub-committee meetings.

(6) All County Project Committees existing prior to a parliamentary election shall continue in office until a new County Projects committee is constituted as in accordance with sub section (1).

(7) The new County Projects Committees shall be constituted within sixty days of a new Parliament being inaugurated.

(8) The Board shall allocate funds to County Projects Committee for administration purposes.

Tabling of proposals

38. The Chairperson of the Constituency Development Fund Committee for each constituency shall table a list of the projects for that constituency at a meeting of the County Projects Committee convened for that purpose and the said list shall also be submitted to the County Assembly in order to align the said projects with the County's Development Plans and Policies.

Duplication of projects to be avoided.

39. The County Projects Committee shall ensure that no duplication of projects occur particularly where it is prudent to combine efforts on projects designed to benefit a large section or sector of a community traversing several constituencies in a County.

County Projects Committee to prepare list.

40. (1) The County Projects Committee shall, at the beginning of every financial year, prepare and circulate to the various Constituency Development Fund Committees in that county a list of other government allocations for various projects in the County.

(2) Despite subsection (1), the existence of another allocation by government to a project in the constituency shall not be used as a reason to deny either approval or funding of any project consistent with this Act.

(3) The existence of another allocation by Government to a different project in the county shall not be used as a reason to deny either approval or funding of any project consistent with this Act.

PART VIII - FINANCE AND ADMINISTRATION

Staff of the Board

41. (1) The Board shall appoint such officers and other staff as are necessary for the proper management of the Fund and discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

(2) The principal management structure of the Board shall be established or varied by the Board with the approval of the Cabinet Secretary

Constituency account.

42. (1) For the purpose of disbursement of funds under this Act there shall be opened and maintained a constituency account for every constituency at any commercial bank, approved by the Cabinet Secretary into which all funds shall be kept and such an account shall be known by the name of the constituency for which it is opened and each constituency shall maintain only one account.

(2) The bank account opened pursuant to subsection (1), shall be separate from that of the County Treasury.

(3) At least three signatories shall be required for every cheque or instrument for actual payment or withdrawal of funds from a constituency account and the signing instructions shall be such that there shall be at least one signature of an officer seconded by the Board and at least two signatures of two members of the Constituency Development Fund Committee.

(4) The Fund account manager shall hold the authority to incur expenditure of the funds at the constituency account.

(5) Funds from the constituency account shall only be withdrawn as disbursements for a particular project in accordance with the provisions of section 9 of the Act.

(6) Every payment or instruction for payment out of the constituency fund account shall be strictly on the basis of a minuted resolution of the Constituency Development

Fund Committee.

(7) All receipts, savings and accruals to the constituency account and the balances thereof at the end of each financial year shall be returned to the Board Fund Account.

(8) All unutilized funds shall remain in the constituency account and no investment elsewhere shall be permitted, provided that funds meant for a project that is cancelled or discontinued shall be returned to the Fund Account in accordance with section 10 of this Act.

(9) All unutilized funds of the Project Management Committee shall be returned to the constituency account.

(10) Any accruing revenues, interest and liabilities from any constituency account shall be declared to the Board together with the annual returns.

Bank account of the Fund

43. (1) A bank account of the Fund shall be opened and maintained at the Central Bank of Kenya.

(2) The signatories to the account of the Fund maintained in accordance with subsection (1), shall be the Chief Executive Officer and three other persons appointed by the Board from amongst its members.

(3) The signing instructions shall be such that the signature of the Chief Executive Officer shall be mandatory on all payment cheques and / or instruments intended for actual release of money from the fund, plus any two of the other three signatories.

Record of disbursements to be kept.

44. (1) An accurate record of all disbursements made for projects to every constituency shall be kept and updated every month by the Board.

(2) The disbursement of funds to the constituency fund account shall be effected at the beginning of the first quarter of each financial year with an initial amount equivalent to twenty-five per centum of the annual allocation for the constituency and thereafter the constituency fund account shall be replenished in three equal installments at the beginning of the second, third and fourth quarters of the financial year.

(3) The Chairperson of the Board shall submit an annual report on the activities, operations and

expenditure under the Act.

(4) At the end of every financial year the Board shall submit separate accounts of the constituencies and the Board to the Auditor General.

PART IX - MISCELLANEOUS PROVISIONS

Finances of the Board.

45. (1) The expenditure for running the Board and related purposes shall be set aside at the beginning of the financial year and not more than five per centum of the total allocation to the Fund in the financial year may be used for this purpose, the annual budget of which shall be approved by the Cabinet Secretary.

(2) The personal emoluments of Government officers working or involved in the management of the Fund shall be provided for under the recurrent expenditure of Government but any other emoluments or payments to such officers from the Fund shall be determined by the Cabinet Secretary.

(3) Sitting allowances for the members of the County Projects Committee shall be paid out of the funds set aside for the Board under subsection (1) and the sitting allowances for the Constituency Development Fund committee shall be paid out from funds set aside in section 22 (7).

(4) The accounts of each constituency and secretariat of the Board shall be audited and reported upon in accordance with the Public Audit Act, 2003 and the Public Finance Management Act, 2012.

No.12 of 2003
No.18 of 2012

Cabinet Secretary to make regulations

46. (1) The Cabinet Secretary may make regulations for the smooth running of the Fund and such regulations shall be approved by the National Assembly before implementation.

(2) The Cabinet Secretary may amend any of the Schedules through a notice in the Gazette, provided that such amendments shall first be approved by the National Assembly before implementation.

Provisions in the Act are complimentary.

47. (1) The provisions of this Act shall be complimentary to any other development efforts by the national government, the county governments 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.

Offences and penalties.

48. Any person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Act, shall be guilty of an offence and shall, upon conviction, be liable to imprisonment for a term not less than five years or to a fine not less than five hundred thousand shillings or to both

Dispute resolution

49. (1) All complaints and disputes by persons arising due to the administration of this Act shall be forwarded to the Board in the first instance

(2) Complaints of a criminal nature shall be forwarded by the Board to the relevant government agencies with prosecutorial powers.

(3) Disputes of a civil nature shall be referred to the Board in the first instance and where necessary an arbitration panel whose costs shall be borne by the parties to the dispute, shall be appointed by consensus of the parties to consider and determine the matter before the same is referred to court.

(4) Notwithstanding subsection(3), parties shall be at liberty to jointly appoint an arbitrator of their choice in the event of a dispute but where parties fail to jointly agree on an arbitrator, the Cabinet Secretary may appoint an arbitrator whose costs shall be jointly borne by the parties.

(5) Subject to this Act, no person in the management of the Fund shall be held personally liable for any lawful action taken in his official capacity or for any disputes against the Fund.

Repeal of No 10 of 2003.

50. (1) The Constituencies Development Fund Act, 2003 is repealed.

Transitional provisions

51. (1) In this section-

"commencement day" means the date when this Act comes into operation;

"former Act" means the Constituencies Development

Fund Act, 2003;

"former Board" means the Constituencies Development Fund Board established by section 5 of the former Act.

(2) On the commencement day, all the funds, assets and other property both movable and immovable, which immediately before such date were vested in the former Board shall by virtue of this subsection, vest in the Board.

(3) On the commencement day, all rights, powers and liabilities, whether arising under any written law or otherwise which immediately before such day were vested in, imposed on or enforceable against the former Board shall be deemed to be vested, imposed or enforceable against the Board.

(4) Any reference in any written law or in any document or instrument to the former Board shall, on and after the commencement day, be construed to be a reference to the Board.

(5) The annual estimates of the former Board for the financial year in which the commencement day occurs shall be deemed to be the annual estimates of the Board for the remainder of that financial year.

(6) The administrative directions made by the Board or by the Cabinet Secretary which are in force immediately before the commencement day shall, on and after such day, have force as if they were directions made by the Board or the Cabinet Secretary under this Act

(7) Any person who is an officer or employee of the former Board immediately before the commencement date of this Act shall be deemed to be an officer or employee of the Board on the same terms he or she was serving before the enactment of this Act.

Provided that such person shall, within a period of six months from the commencement day, exercise his or her option either to

(a) enter into a written contract of service with the Board , whereupon his or her service with the Government shall be deemed to have been terminated without right to severance pay but without prejudice to all other

remuneration and benefits payable upon such termination; or

(b) be re-deployed by the Government.

(8) The members of the former Board and the Chief Executive Officer shall continue in office as members of the Board and the Chief Executive Officer respectively until the expiry of their existing terms.

FIRST SCHEDULE *(s. 15)*

CONSTITUENCY PROJECTS SUBMISSION FORM

Constituency No.....Constituency Name.....Financial year.....

Chairman CDFC Committee .....Signature.....Date.....

Serial	Name of Project	Amount allocated
Total for the Financial Year		

SECOND SCHEDULE (s. 16)

PROJECT DESCRIPTION FORM

Constituency No: ..... Constituency Name ..... County .....

Project Number .....

Project Title .....

Sector .....

Status of projects (tick one) New ..... Extension ... On-going .....

Rehabilitation .....

Brief statement on project status at time of submission

.....

.....

.....

Financial year .....1st July ..... To 30th June .....

Original Cost estimates, in KSh. ..... dated .....

Amount allocated last financial year .....

Person completing form: ..... Signature .....

Name .....Position .....

Date ....

THIRD SCHEDULE *(s. 10(5))*

PROJECT RE-ALLOCATION FORM

Constituency No.....Name.....Financial year.....

Project No	Project Title	Amount allocated (Kshs)	Amount disbursed (Kshs)	Balance (Kshs)	Unspent to be re-allocated

Project No	Project Title	Amount allocated (Kshs)	Amount disbursed (Kshs)	Balance (Kshs)	Unspent to be re-allocated
Totals					

Signature.....Date.....

Name.....Position.....

FOURTH SCHEDULE *(s 7)*

CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Tenure of office.

1. The Chairperson or a member of the Board other than ex-officio members shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for appointment for not more than two terms.

Vacation of office.

2. (1) A member other than an ex-officio member may—

(a) at any time resign from office by notice in writing to the Cabinet Secretary;

(b) be removed from office by the Cabinet Secretary on recommendation of the Board if the member—

(i) has been absent from three consecutive meetings of the Board without its permission;

(ii) is convicted of a criminal offence that amounts to a felony under the laws of Kenya;

(iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months; or

(iv) is otherwise unable or unfit to discharge his functions.

(2) The Chairperson shall not be removed from office

unless such removal is in accordance with sub paragraph (1).

Meetings.

3. (1) The Board shall meet not less than six and not more than eighteen times in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding sub paragraph (1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the

Board shall be five members.

(5) The Chairperson shall when present, preside at every meeting of the Board but the members present shall elect one member to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached, a

decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

Committees of the Board

4. (1) The Board may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

(2) The Board shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.

(3) The Board may where it deems appropriate, invite any person to attend the deliberations of any of its committees

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Board.

Disclosure of interest.

5. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) shall cease to be a member of the Board upon direction of the Cabinet Secretary.

Contracts and instruments.

6. Any contract or instrument which, if entered into or executed by a person not being a body corporate,

would not require to be under seal may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

Common seal.

7. (1) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Board shall be authenticated by the signature of the Chairperson, the Chief Executive Officer and one member nominated by the Board and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairperson, the Chief Executive Officer and that member nominated by the Board.

(3) The common seal of the Board when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

8. The provisions of this Schedule shall apply to the conduct of the business of the Constituency Development Fund Committee but only where no specific provisions have been made in this Act, and only in so far as they do not constitute a contradiction or negation of the provisions of the Act.