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SPECIAL ISSUE

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**PARLIAMENT
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KENYA NATIONAL ASSEMBLY

LIBRARY
MAIN BUILDING

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

ACTS, 2007

NAIROBI, 30th October, 2007

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**THE CONSTITUENCIES DEVELOPMENT FUND
(AMENDMENT) ACT**

No. 16 of 2007

Date of Assent: 22nd October, 2007

Date of Commencement: By Notice

**An Act of Parliament to amend the Constituencies
Development Fund Act, 2003**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Constituencies Development Fund (Amendment) Act, 2007, and shall come into operation on such date, being not later than thirty days from the date of assent, as the Minister may, by notice in the Gazette, appoint.

Short title and commencement.

2. The Constituencies Development Fund Act, 2003, in this Act referred to as the "principal Act" is amended in section 2—

Amendment of section 2 of No 10 of 2003.

(a) by inserting the following new definitions in proper alphabetical sequence-

"Board" means the Constituencies Development Fund Board established by section 5 ;

"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 7;

"National Account" means the Constituencies Development Fund account maintained under section 46";

"officer of the Board" means an officer of the Board appointed under section 44;

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

"project 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

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.

(3) The Board shall be administered by a Board of Management which shall consist of —

- (a) the Permanent Secretary of the Ministry for the time being responsible for matters relating to economic planning or his designated alternate, not being below the level of Director of Planning;
- (b) the Permanent Secretary of the Ministry for the time being responsible for matters relating to finance or his designated alternate, not being below the level of Director of Budget;
- (c) the Clerk of the National Assembly or his designated alternate not being below the level of Deputy Clerk;
- (d) the Attorney-General or his designated alternate not being below the level of Senior State Counsel;

5. Section 6 of the principal Act is amended—

(a) in subsection (1)—

- (i) by deleting the words “National Committee” and substituting therefor the word “Board”;
- (ii) by deleting the words “allocation and” appearing in paragraph (a) and substituting therefor the words “timely and efficient”;
- (iii) by deleting the word “prudent” appearing in paragraph (b) and substituting therefor the word “efficient”;
- (iv) by deleting paragraph (e) ;
- (v) by deleting paragraph (f);
- (vi) by inserting the following new paragraphs immediately after paragraph (d)-

- (e) receive and address complaints and disputes and take any appropriate action;

- (f) to 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) to perform such other duties as the Minister, with the concurrence of the Constituencies Fund Committee, may deem necessary from time to time for the proper management of the Fund.

(b) by deleting subsection (2) and substituting therefor with the following new subsection—

(2) Where any issues of policy arise in the course of the performance of its functions under this Act, the Board shall

- (a) by deleting the words "approved by the National Committee" appearing in subsection (1) and substituting therefor the words "minuted by the "Board";
- (b) by deleting the words "provided for in the printed estimates prepared for projects under " appearing in subsection (2) and substituting therefor the words "submitted by the constituencies in accordance with the procedures outlined in ";
- (c) by inserting a new subsection immediately after subsection (3) as follows-

(3A) Notwithstanding the provisions of subsection (3), payments for a joint project as outlined in section 22 (4) or joint procurement, may be made directly to a supplier or to an account established for the purpose with due concurrence of the Constituencies Fund Committee";

- (d) by deleting the words "National Committee" appearing in subsection (4) and substituting therefor the word "Board";
- (e) by deleting subsection (6).

9. Section 9 of the principal Act is amended—

- (a) by deleting subsection (1) and substituting therefor the following new subsection-

(1) The Minister, with the concurrence of the Constituencies Fund Committee, shall for each financial year allocate funds to each constituency in accordance with section 19.

- (b) by inserting the words "without the approval of the "Board" at the end of subsection (2).
- (c) by deleting subsection (3) and substituting therefor the following new subsection-

Amendment of
section 9 of No 10 of
2003

(2) The Constituency Development Fund Committee shall determine the allocation of the emergency reserve and may re-allocate such reserve to other projects at the end of the financial year, in accordance with the Act.

12. Section 12 of the principal Act is amended by deleting the words "Clerk" and "him" appearing in subsection (2) and substituting therefor the word "Board" and "it" respectively.

Amendment of section 12 of No 10 of 2003.

13. Section 13 of the principal Act is amended by deleting the word "Clerk" and substituting therefor the word "Board".

Amendment of section 13 of No 10 of 2003.

14. Section 14 of the principal Act is amended by deleting the words "cost estimates of" appearing in subsection (2) and substituting therefor the words "amounts allocated to".

Amendment of section 14 of No 10 of 2003.

15. Section 15 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection-

Amendment of section 15 of No 10 of 2003.

(2) The Minister may, with the concurrence of the Constituencies Fund Committee, amend any of the Schedules to this Act.

16 The principal Act is amended by repealing section 16 and replacing it with the following new section-

Replacement of section 16 of No 10 of 2003.

Approval of projects.

16 (1) The list of projects received by the Board pursuant to section 12 shall be tabled for review at a meeting of the Board.

(2) The Board shall scrutinize and approve for funding those projects proposals 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 Fund Committee giving reasons as to why it has declined the proposal.

(4) The Constituencies Fund

(e) by inserting the following new subsections immediately after subsection (7)—

(8) Development projects may include the acquisition of vehicles, machinery and other equipment.

(9) An appropriate amount not more than three per centum of a constituency's annual allocation may be allocated to recurrent expenses of vehicles, equipment and machinery and be listed as a project provided that such items do not belong to a separate entity.

(10) Sports activities may 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.

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

(12) 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.

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

20. Section 22 of the principal Act is amended—

(a) by deleting the word "twenty" appearing in subsection (1) and substituting therefor the words "twenty five";

members of the Constituency Development Fund Committee shall be three years renewable but shall come to an end upon the appointment of a new Constituency Development Fund Committee in a manner provided for in this Act.

(8) Whenever there is a new Member of Parliament through a general election or by-election, the new Member of Parliament shall constitute and convene a new Constituency Development Fund Committee;

Provided that—

(a) the Constituency Development Fund Committees existing prior to a parliamentary election or by election shall continue in office until a new Constituency Development Fund Committee is constituted after the election or by election in a manner provided for under this Act; and

(b) the list of projects shall not be changed other than at the end of the financial year or in accordance with this Act.

(9) The officer of the Board 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 Development Fund Committee by reason of

or upon the appointment of a new committee in a manner provided for in this Act, whichever comes earlier” at the end of subsection (2);

(b) by deleting paragraph (a) of subsection (4) and substituting therefor the following new paragraph—

(a) to determine the allocation and distribution to each constituency, of the amounts collected under section 4(2) and the utilization of any unspent funds intended for use by the Board under this Act;

(c) by inserting the following new subsection immediately after subsection (4)—

(5) The Committee may make reports other than the statutory report stated in sub section 4 (d) to appraise the National Assembly on various matters relating to the Fund and to seek various approvals as required by the Act.

26. The principal Act is amended by repealing section 28 and replacing it with the following new section—

Repeal of section 28
of No 10 of 2003.

Monthly reports on
projects and
disbursements.

28. The Board shall, on a monthly basis, submit a report to the Constituencies Fund 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; and

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

(c) a summary of the status of

acquired pursuant to subsection (5) shall be credited to the account of the constituency from whose funds the asset was acquired.

29. Section 31 of the principal Act is amended by deleting subsection (2).

Amendment of section 31 of No 10 of 2003.

30. The principal Act is amended by repealing section 33 and replacing it with the following new section—

Replacement of section 33 of No 10 of 2003.

Record of receipts and disbursement.

33. The officer of the Board in every constituency shall compile and maintain a record showing all receipts and disbursements 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 sixty days after the end of every financial year.

31. Section 36 of the principal Act is amended—

(a) by deleting the word “shall have the power to” appearing in subsection (1) and substituting therefor the word “may”;

(b) by deleting the word “shall” appearing immediately before the words “attend each” in subsection (2) and substituting therefor the word “may”.

Amendment of section 36 of No 10 of 2003.

32. Section 39 of the principal Act is amended by deleting subsection (2).

Amendment of section 39 of No 10 of 2003.

33 Section 40 of the principal Act is amended—

(a) by inserting the word “Fund” immediately after the word “Development” appearing in paragraph (e) of subsection (1)

Amendment of section 40 of No 10 of 2003.

Provided that the principal management structure of the Board shall be established or varied by the Board with the concurrence of the Constituencies Fund Committee.

36. Section 45 of the principal Act is amended—

Amendment of section 45 of No 10 of 2003.

- (a) by inserting the word “Fund” immediately after the word “Development” appearing in subsection (3);
- (b) by deleting subsection (5) and substituting therefor the following new subsection—

(5) 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.

- (c) by inserting the word “fund” immediately after the word “constituency” appearing in subsection (6);
- (d) by deleting the words “shall be returned to the Fund in accordance with section 9” appearing in subsection (7) and substituting therefor the words “retained in the account until the end of the financial year when they may be reallocated in accordance with this Act”;
- (e) by deleting the words “National Committee” appearing in subsection (8) and substituting therefor the words “Board”

37. Section 46 of the principal Act is amended—

Amendment of section 46 of No 10 of 2003.

- (a) by deleting the words “the Officer administering the Fund and two other persons appointed by the National Committee from amongst its members” appearing in subsection (2) and substituting therefor the words “Chief

operations and expenditure under the Act.

39. The principal Act is amended by repealing section 48 and replacing it with the following new section-

Replacement of section 48 of No 10 of 2003.

Finances of the Board.

48. (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 three 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 Minister with the concurrence of the Constituencies Fund Committee, and expenses shall not be incurred until such approval is accorded.

(2) The Board shall, at the end of each financial year, submit to the Constituencies Fund Committee a statement showing the balance or shortfall, if any, arising out of its approved annual budget for that year and the Board shall, with the concurrence of the Constituencies Fund Committee, determine the manner in which such balance or shortfall shall be spent or met respectively.

(3) 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 Minister with the concurrence of Constituencies Fund Committee.

(4) Sitting and other allowances for the members of the District Projects Committee and Constituency Development Fund Committee shall be fixed by the Board with the concurrence of the Constituencies Fund Committee and shall be paid out of the funds set aside for the Board under subsection (1).

Committee shall, by virtue of this subsection, be deemed to be vested in, imposed on or enforceable against the Board .

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

(5) The annual estimates of the National Committee 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 National Committee or by the Minister 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 Minister under this Act.

(7) Any person who is an officer or employee of the National Committee shall, immediately before the commencement day shall be deemed to be an officer or employee of the Board.

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

SCHEDULE (sections 41, 42, 43, 44, 45 and 46)**FIRST SCHEDULE**

(section. 5(5))

LIST OF ORGANIZATIONS TO NOMINATE PERSONS TO THE BOARD

- The Kenya National Federation of Agricultural Producers.
- The Institution of Engineers of Kenya.
- The Kenya National Chamber of Commerce and Industry.
- The Kenya Episcopal Conference.
- The Kenya National Union of Teachers.
- The National Council of Churches of Kenya.
- The Supreme Council of the Kenya Muslims.
- The Institute of Certified Public Accountants of Kenya

