

CIVIL SOCIETY GROUPS OBJECT TO APPLICATION FOR STAY OF CDF INVALIDITY ORDER FILED BY THE CDF BOARD AND THE NATIONAL ASSEMBLY

1. **February 20, 2015:** The High Court rendered judgment invalidating the Constituency Development Fund but suspending the effect of invalidation for 12 months to allow Parliament to address the unconstitutionality of the CDF. Immediately, three parties, The National Assembly, The Attorney General and The Constituency Development Fund Board filed notices of appeal at the Court of Appeal.
2. **May 6, 2015:** Two of the parties The CDF Board and National Assembly file their substantive appeals requesting a **four-year stay on the judgment of the High Court** arguing the Board requires this length of time to be able to complete all the projects funded through CDF.
3. **Objection to Extension:** The Petitioners The Institute for Social Accountability (TISA) and Centre for Democracy and Good Governance (CEDGG), have raised preliminary objections to the Notice of Motion arguing that the High Court no longer has jurisdiction to hear the matter since the matter is substantively before the Court of Appeal. Further to this, the suspension of the invalidity of the fund for a period of 12 months according to the original ruling was itself a stay of the ruling. **It is therefore unreasonable for the Board and Parliament to seek a further extension.**
4. The CDF Board and the National Assembly have failed to demonstrate any intention to respect the court ruling.
 - In fact, the National Assembly increased allocations to the fund and many new construction projects have been approved.
 - CDF board and the National Assembly further conducted public hearings for the public to provide their views towards a CDF framework that is aligned to the constitution. **However, the public hearings were carried out in a manner that resulted to an abuse of public participation process, which attracted the reprimand of the Ombudsman.**
 - This happens in light of the Auditor General remarks that 30 constituencies are not able to account for over **200 million** after the CDF expenditure audit.
 - The CDF Board is also not properly constituted as the Chief Executive Officer is holding office in an acting capacity.

- Further an audit report prepared by the Auditor General's office in 2013 raised substantive queries about the financial probity of the CEO.

5. We object to continued illegalities under the Constituency Development Fund

In essence, the National Assembly and the board seek the extension of the following illegalities:-

- a) That CDF continues to **violate the separation of functions** contrary to Article 6, Article 201 and the fourth schedule of the constitution;
- b) That CDF continues to fund development projects at the County level **outside county planning mechanisms specifically County Integrated Development Planning (CIDP)** that captures 5 years development plans for the counties, which results to duplication of projects and wastage of resources;
- c) That CDF continues to distort the division of revenue mechanisms between the National and County as it requires that the 2.5% of the annual revenue allocated to the CDF be extracted from the total revenue before the 15% minimum to be allocated to the counties is calculated;
- d) That CDF continue to violate the principle of **separation of powers** since the National Assembly which legislated CDFA would also be implementing and overseeing these functions;
- e) That CDF continue to create a false assumption to the effect that it allocates conditional funds even though this money cannot be treated as additional revenue to the counties (as the Act says) because the money earmarked for local projects must be given to the county governments and not to any other party;

The CDF case is premised on the integrity and proper implementation of devolution. It relates to the need for and duty of the Courts to be proactive in protecting the constitutional principles that relate to devolution, especially when the National Assembly vacates this responsibility. The judgment was given in favour of basic principles of rule of law and good governance, and we call on the National Legislature to respect it.

The next hearing for the case is scheduled for **28th September 2015 at the High Court.**

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