


Approved for tabling

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12/9/19

THE NATIONAL ASSEMBLY REPUBLIC OF KENYA MEMBERS LAID	
DATE: 17 SEP 2019	DAY: THURSDAY
TITLED BY:	HON. MAOKA MAORE, MP CHAIRPERSON - NG-CDF SELECT COMMITTEE
CLERK OF THE TABLE:	



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION – 2019

**SELECT COMMITTEE ON NATIONAL GOVERNMENT CONSTITUENCIES
DEVELOPMENT FUND**

.....
**REPORT ON THE NATIONAL GOVERNMENT CONSTITUENCIES
DEVELOPMENT FUND (AMENDMENT) BILL, 2019**

**CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI**

JUNE, 2019



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EXECUTIVE SUMMARY

This report contains the Committee's proceedings on the consideration of The National Government Constituencies Development Fund (Amendment) Bill, 2019. The Bill was read a first time on **24th April, 2019** and was subsequently committed to the Select Committee on National Government Constituencies Development Fund for consideration and facilitation of public participation pursuant to Standing Order 127.

The Bill seeks to amend, the National Government Constituencies Development Fund Act, No. 30 of 2015 to: Reduce the percentage of the total allocation to the Fund from 5% to 3%; change the date of preparation of annual estimates from "at the end of February" to at least three months before the commencement of each financial year. This translates to at least end of March; and to provide a more detailed procedure in submitting annual estimates over and above that that is provided in law.

In processing the Bill, the Clerk of the National Assembly placed adverts in the print media on **30th May, 2019** seeking for comments from the public on the Bill pursuant to Article 118 of the Constitution. The Committee received memoranda from one stakeholder and that is the National Government Constituencies Development Fund Board. The Committee held a stakeholder engagement workshop at English Point Marina, Mombasa on 14th and 15th June, 2019.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and the National Government Constituencies Development Fund Board who made useful contributions towards the preparation and production of this report.

On behalf of the Select Committee on National Government Constituencies Development Fund and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honor to present to this House the report of the Committee on its consideration of the National Government Constituencies Development Fund (Amendment) Bill, 2019.

PREFACE

1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

The Select Committee on National Government Constituency Development Fund is a Select Committee established pursuant to the National Government Constituency Development Fund Act, 2015 and is mandated to inter alia “Oversee the policy framework and legislative matters that may arise in relation to the Fund; and Continually review the frame set out for the efficient delivery of development programmes financed through the Fund”.

The Select Committee on NGCDF is established in accordance with the provisions of the section 50 of the NGCDF Act, 2015 and the S.O. 216 of the National Assembly and its functions include but not limited to:

- (a) Oversee the implementation of the 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;
- (b) Oversee the **policy framework** and **legislative matters** that may arise in relation to the Fund;
- (c) Continually review the **frame set out for the efficient delivery of development** programmes financed through the Fund;
- (d) Consider and report to the National Assembly, with recommendations, names of persons required to be approved by the National Assembly under this Act.

The committee remains committed to continually review the framework set out for the efficient delivery of development programs financed through the Fund.

1.2 COMMITTEE MEMBERSHIP

Hon. Richard Maore Maoka, CBS, MP **Chairperson**
Member of Parliament for Igembe North
Jubilee Party

Hon. Omar Mohamed Maalim, MP **Vice-Chairperson**
Member of Parliament for Mandera East Constituency
Economic Freedom Party

Members

Hon. Fred Kapondi Chesebe ,MP
Member of Parliament for Mt. Elgon
Constituency
Jubilee Party

Hon Johanna Ngeno, MP
Member of Parliament for Emurua Dikir
Constituency
Jubilee Party

Hon. Mishi Mboko, MP
Member of Parliament for Likoni
Constituency
Orange Democratic Movement

Hon. Titus Khamala, MP
Member of Parliament for Lurambi
Constituency
Amani National Congress

Hon. Sophia Abdi Noor, MP
Member of Parliament for Ijara
Constituency
Party for Development and Reforms

Hon. Richard Tongi, MP
Member of Parliament for Nyaribari Chache
Constituency
Jubilee Party

Hon. Moses Lessonet, MP
Member of Parliament for Eldama Ravine
Constituency
Jubilee Party

Hon. Sharif Athman Ali, MP
Member of Parliament for Lamu East
Constituency
Jubilee Party

Hon. Emmanuel Wangwe, MP
Member of Parliament for Navakholo
Constituency
Jubilee Party

Hon. Alfah Ondieki, MP
Member of Parliament for Bomachoge
Chache MP
Kenya National Congress

Hon. Benjamin Gathiru Mwangi, MP
Member of Parliament for Embakasi Central
Constituency

Jubilee Party

Hon. Ferdinard Wanyonyi, MP
Member of Parliament for Kwanza
Constituency

Ford Kenya

Hon. Janet Jepkemboi Sitienei, MP
Member of Parliament for Turbo
Constituency

Independent Member

Hon. Kasim Tandaza Sawa, MP
Member of Parliament for Matuga
Constituency

Amani National Congress

Hon. Fred Ouda, MP
Member of Parliament for Kisumu Central
Constituency

Orange Democratic Movement

Hon. Joshua Mwalyo, MP
Member of Parliament for Masinga
Constituency

Wiper Party

Hon. Mary Wamaua Waithira, MP
Member of Parliament for Ndaragwa
Constituency

Jubilee Party

1.4 COMMITTEE SECRETARIAT

The Committee is facilitated by the following staff: -

Mr. Johnston Kioko **Lead Clerk**

Second Clerk Assistant

Ms. Naserian Lotuai

Third Clerk Assistant

Mr. Erick Ososi

Research Officer

Ms. Brigita Matti

Legal Counsel

Ms. Farida Ngasura

Audio Recording Officer

Ms. Esther Ngechu

Sergeant At Arms

2 CONSIDERATION OF THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND (AMENDMENT) BILL, 2019 BY HON. MAKALI MULU, MP

2.1 BACKGROUND INFORMATION

1. The National Government Constituencies Development Fund (Amendment) Bill, 2019 is a Bill proposed by Hon. Makali Mulu. The object of the Bill is to provide for an accountable process for allocation of funds for the purposes of running the National Constituencies Fund Board.

2.2 SUMMARY OF THE AMENDMENTS

2. The Bill seeks to amend Section **23(1)** of the Act to reduce the percentage of the total allocation to the Fund from 5% to 3%; and also to change the date of preparation of annual estimates from “at the end of February” to at least three months before the commencement of each financial year. This translates to at least end of March.
3. The Bill also introduces a new subsection 3 to provide a more detailed procedure in submitting annual estimates over and above that that is provided in law.

2.2 PUBLIC PARTICIPATION ON THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND (AMENDMENT) BILL, 2019

Pursuant to Article 118 of the Constitution, the Clerk of the National Assembly placed an advertisement in the Daily Nation and Standard newspapers on Thursday, 30th May, 2019 requesting for comments from the general public and or interested individuals/organizations. By the close of the deadline and by the time the Committee was considering the Bill, the Committee had received a memorandum from one stakeholder.

The National Government Constituencies Development Fund Board was the only stakeholder that submitted their memoranda to the Committee.

The Committee therefore organized a two day joint retreat at English Point Marina, Mombasa on 14th and 15th June, 2019 to deliberate further on the bill.

The stakeholder made the following submission:

3.1 NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND BOARD

The Board submitted that: -

A. THE BUDGET IMPLICATION

Section 2 of the (Amendment) Bill, proposes to amend the current section 23 of the National Government Constituencies Development Fund Act 2015 and substituting thereof with the following new sections:

“23 (1) The Board shall at least three months before the commencement of each financial year cause to be prepared estimates of the expenditure of the Board for that 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.”

Proposed Amendment

Delete the amendment and retain the current section 23 in the Act.

Justification

1. The Current section 23 of the Act is clear that “the expenditure for running the Board and related purposes shall be set aside at the beginning of the 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 section therefore implies that the precise percentage set aside for the running of the Board is determined by the budgetary requirements of the Board as approved but in any case not more than 5%, for instance:

- a. In 2016/2017 financial year, the allocation to the Board was **3.52%** and the amount received was **Kshs 1,250,000,000;**
 - b. In 2017/2018 financial year, the allocation to the Board was **4.45%** and the amount received was **Kshs 1,325,000,000;** and
 - c. In 2018/2019 financial year, the allocation to the Board was **4.65%** and the amount received was **Kshs 1,547,930,000;**
2. The budget for the Board amounting to not more than 5% is utilized in funding the activities of the Board of Directors, the secretariat, the regional offices and constituencies.
 3. Key Annual Budget requirements for implement the Board’s programmes as outlined in the Act and the Strategic Plan are:

S/No	Expenditure Category	Total Requirements (Current Financial Year in Kshs)
1	Personnel Emoluments	830,200,861.00
2	Insurance Costs (Staff medical and assets)	75,000,000.00
3	Expenses specific to the Board of Directors	88,756,800.00

S/No	Expenditure Category	Total Requirements (Current Financial Year in Kshs)
4	Office accommodation and services	17,000,000.00
5	Office services (utility bills and postal services)	21,178,000.00
6	NGCDFC trainings	163,000,000.00
7	Constituencies PFM trainings & Performance Management	58,600,000.00
8	Staff trainings	75,660,372.00
9	Constituencies internal Audit	42,708,450.00
10	Monitoring and Evaluation of constituency projects	50,000,000.00
11	Publicity Programmes	63,680,000.00
12	Legal services	50,000,000.00
	Total	1,535,784,483.00

See Annexure 1 for detailed Budget items.

Staff emolument has increased from about **Kshs 530,000,000** in 2013/2014 to a current figure of Kshs 830,200,861 due to increased staffing and increase in salary, from an average of Kshs 50,000 to Kshs 154,000, for Fund Account Managers, who account for about 70% of the total staff establishment.

Some of the budgetary items are expected to increase in the next financial year. For instance, the Board is set to recruit additional 140 staff which will see an increase of staff emolument to **Kshs 991,154,689**, and this will go even higher due to annual salary increment.

Further, the Board is in the process of procuring additional space, to cater for current and additional staff, thus the current office cost will increase by more than twice the current figure.

4. The Board employees are engaged on a three-year contract and a provision for gratuity is set aside to cater for the payments at maturity. This amount to Kshs 114,347,573 giving a total Personnel emoluments figure of Kshs 830,200,861.
5. Comparison of the Actual allocation vs allocation as per amendment bill

Actual Allocation Vs Allocation At Proposed 3%			
Financial year	Funds allocation	Actual Allocation	Board Allocation based on 3%
2016/2017	35,505,000,000	1,250,000,000	1,065,150,000
2017/2018	29,800,000,000	1,325,000,000	894,000,000
2018/2019	33,286,162,000	1,547,930,000	998,584,860

Based on the above analysis, it is evident that, if the 3% applies as proposed in the amendment, the Board allocation would be **Kshs 998,584,860**. This would only cater for the Personnel emoluments amounting to **Kshs 830,200,861** and leave a balance of Kshs 168,383,999 to cater for all other Board expenses.

Therefore, the net effect would be the Board will not be able to meet the Personnel Emoluments and other non-discretionary expenditure required as indicated in the key budgetary requirements.

6. Key Programmes likely to be affected by reduction in Board's Budget are those contained in the Boards Strategic Plan which contains important programmes aimed at ensuring efficient management of the Fund. These will be adversely affected by any downward revision of its budget from the current a maximum of 5% to the proposed a maximum of 3%. Some of the key programmes are: -

- a. Scrutiny and approval of Constituencies Project Proposals and timely disbursement of funds;
- b. Automation of NG-CDF Operations;
- c. Employee remuneration
- d. Constituency Performance Management,
- e. Capacity Building of NG-CDF Committees;
- f. Preparation of Annual Accounts for Constituencies for submission to the Auditor General;
- g. Internal Audit of Constituencies
- h. Risk Management programmes;
- i. Strengthening of Communication and Publicity
- j. Monitoring, evaluation and impact assessment of NG-CDF

7. Arising from the foregoing, it is clear that for the Board to effectively discharge its wide functions under the Act, including ensuring efficient management of the Fund, the current section 23 should be retained. This will further enable the realization of the objectives for which the Fund was established as provided for under section 3 of the NGCDF Act.

B. THE BUDGETARY PROCESS

The proposed Section 23(1) by the Bill states:

“23 (1) The Board shall **at least three months** before the commencement of each financial year cause to be prepared estimates of the expenditure of the Board for that 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.”

Proposed Amendment

Delete the amendment and retain the current section 23 in the Act.

Justification

8. Clearly, the proposed amendment introduces new timelines in regards to budgetary making process. This will be in contravention with the Constitution and mandatory provisions of Public Finance Management Act [PFM) and State Corporations Act, CAP 446. This is demonstrated as follows:

i. The Constitution

Article 225 of the Constitution provides for the establishment of financial control legislation, which is the Public Finance Management (PFM) Act. Hence, the PFM Act derives its mandate from the Constitution.

ii. Public Finance Management (PFM) Act and PFM Regulations

The PFM Act, prevails over all other legislation on financial management matters. The proposed amendment introduces new timelines in regards to budgetary making process which contravenes Section 6 of the PFM Act:

“6. This Act shall prevail in the case of any inconsistency between this Act and any other legislation, on the following matters:

(a) preparation and submission of budget estimates, including the time for doing so;”

Further, Section 36 of the PFM Act provides that:

“(1) The Cabinet Secretary shall manage the budget process at the national level.

(2) Not later than the 30th August in each year, the Cabinet Secretary shall issue to all national government entities a circular setting out guidelines on the budget process to be followed by them.

(3) The circular shall include—

(a) a schedule for preparation of the budget indicating key dates by which various exercises are to be completed;

(4) Every national government entity shall comply with the guidelines, and in particular, such dates as are specified in the schedule referred to in subsection (3)(a)".

Further Section 68 of the PFM Act provides as follows:

"(2) In the performance of a function under subsection (1), an accounting officer shall—

(j) Submit the estimates of a public entity which is a state corporation to the Cabinet Secretary responsible for that state corporation who, after approving it, shall forward it to the Cabinet Secretary;"

Further to the foregoing, Regulations to the PFM Act provides as follows:

R. 218. (1) The Cabinet Secretary responsible for the state corporation shall approve the estimates of budget for the state corporation and shall not later than January every year, submit to the National Treasury for approval those estimates for the following financial year.

(2) The National Treasury shall provide guidelines and the format on which the budget shall be prepared.

3) Budget estimates submitted under paragraph (1), shall be classified as follows—

(a) Compensation of employees;

(b) Use of goods and services;

(c) Transfers to other levels of government; and

(d) Capital.

iii. State Corporations Act

State Corporations Act is an Act of general application for all state corporations. The President may however under section 5A of the Act, exempt state corporations not established under the Act from any provisions of the Act. There are however certain Sections that are not **exemptible**.

Such Sections is 11 (1)

"11. Annual estimates (1) Every state corporation shall cause to be prepared and shall, not later than the end of February in every year, submit to the Minister and to the Treasury for approval, estimates of the state corporation's revenue and expenditure for the following financial year accompanied by proposals for funding all projects to be undertaken by the state corporation, or the implementation of which will continue during the financial year to which those estimates relate.

(2) No annual estimates and proposals for funding projects shall be implemented until they have been approved by the Minister with the concurrence of the Treasury."

9. In implementing the above provisions, the Board prepares a budget in line with the guidelines issued by the Cabinet Secretary, National Treasury for submission and approval by Cabinet Secretary upon recommendation by the National Treasury. The law mandates the National Assembly through the Select Committee on NG-CDF to give concurrence for the annual Budget of the Board.
10. Hence, as demonstrated, the introduction of new timelines by the amendment will contravene other mandatory provisions of Laws and will be considered inconsistent and invalid.

C. RETENTION OF SAVINGS AND ACCRUALS IN THE FUND

The Proposed Section 23(4) of the Bill provides that:

“All receipts, savings and accruals of the annual budget approved under subsection (2) at the close of each financial year shall not be paid to the consolidated Fund, but shall be retained in the Fund and applied in accordance with section 34.”

Proposed Amendment

Delete the amendment on section 23(4) as this is already provided for in Section 7 of the Act.

Justification

11. The Provision of Section 7 of the NGCDF already provides for retention of the savings and accruals:
 - “7. Funds to be retained in the Fund
 - (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 6(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 6(3) or funds which are not utilized for whatever reasons.
12. As indicated above, there is an existing provisions of retention of the Fund, and therefore, the proposed new Section 23(4) would be legislating on an already existing section.
13. Further, the section would literally bring the operations of the Board into a halt if applied with accordance to section 34. It implies that after June 30, every year, the Board must wait for

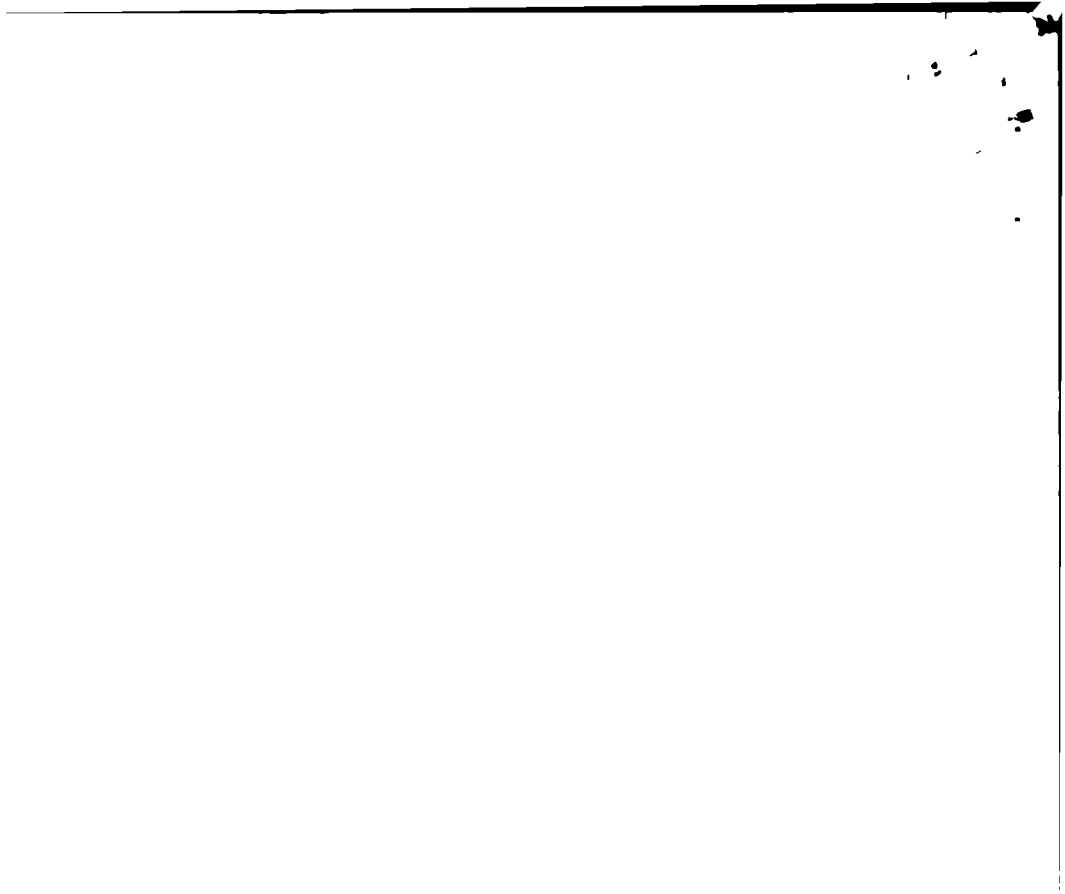
replenishment of funds from the Treasury, which ordinarily are received towards the second quarter. This would lead the Board into operational and legal quagmire.

D. COMMITTEE OBSERVATIONS

14. Arising from the foregoing analysis, it is evident that section 23 of the NGCDF Act is **self-regulating** as it provides for a maximum of 5% of the total Fund allocation for the management of the Fund. As per section 23, the Board sets aside funds (not more than 5%) with the approval of the Cabinet Secretary upon recommendation by the National Treasury and concurrence of the National Assembly Select Committee on NGCDF. In the last three financial years, for example the approved budget of the Board accounted for varying percentages ranging from 3.5% in 2016/17 to 4.65% in 2018/19.
15. It was noted that the proposed amendment to a maximum of 3% will have the following adverse effects:
 - a. The Board after paying personnel emoluments will hardly have funds to finance other functions as stipulated in the Act and Strategic Plan;
 - b. In the event of the National Government revenue falling below the current level, the Board will not be able to finance its operations;
 - c. The Board will not be able to effectively monitor the funds disbursed to Constituencies annually that accounts for more than 95% of monies allocated to the Fund;
 - d. The Board will not be able to undertake routine audit of the application of the funds thereby running at a risk of untold misappropriation and wastage of taxpayer's funds;
 - e. The Board will be unable to discharge its functions as provided for under the Act;
 - f. The Board will not be able to capacity build its officers and Constituencies committees on management and application of the funds;
 - g. The realization of the objectives for which the Fund was established will not be possible;
 - h. The Board of Directors activities will be grounded;
 - i. It will not be possible to defend and protect the Board's interest in ever increasing litigations;
 - j. It shall not be possible to project and sustain the image of the Board against ever-increasing attacks from civil societies;



- k. It will not be possible for the Board to undertake routine review of accounting systems and books of accounts across the 290 Constituencies. This will hamper the implementation of resolutions emanating from National Assembly Special Fund Accounts Committee reports; and
- l. It would not be possible to undertake review of financial statements and submit the 290 reports to the Auditor General. This will lead will lead to noncompliance with Constitutional and statutory provisions.
16. The amendment would bring rise to inconsistencies with other laws, as indicated above (e.g. PFM and State Corporations) as well as legislation on an already existing provision case of Section 7 of the NGCDF Act 2015. This will make it impossible for the Board to comply with law, as there shall be conflicting legal provisions. Further, this scenario may give rise to litigations that will affect the implementation of the Board's programme.
17. By focussing on the 5%, the bill misses to focus on the role of the Board in ensuring efficient utilization of the funds allocated to the Constituencies that account for over 95% of the annual allocation of the Fund.
18. Sections 7 and 23 of the NGCDF Act as is therefore sufficiently address the issues the amendment bill seeks to cure.



E. COMMITTEE RECOMMENDATION

The Committee recommends the following—

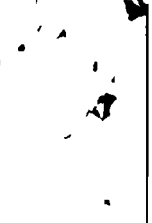
1. Clause 2 of the Bill be deleted;
2. Clause 1 of the Bill be deleted;
3. The long title of the Bill be deleted; and
4. The title of the Bill be deleted

SIGNED..........DATE.....11/09/2019

HON. RICHARD MAORE MAOKA, CBS, MP

CHAIRPERSON

**SELECT COMMITTEE ON NATIONAL GOVERNMENT CONSTITUENCIES
DEVELOPMENT FUND**



**MINUTES OF THE 16TH MEETING OF THE NATIONAL ASSEMBLY SELECT COMMITTEE
ON GOVERNMENT CONSTITUENCY DEVELOPMENT FUND HELD ON THURSDAY
18TH JUNE , 2019 AT 10TH FLOOR HARAMBEE PLAZA, AT 11.30AM**

MEMBERS PRESENT

1. Hon. Richard Maore Maoka, MP - Chairperson
2. Hon. Omar Maalim, MP -Vice Chairperson
3. Hon. Mishi Mboko, MP
4. Hon. Benjamin Gathiru Mwangi, MP
5. Hon. Mwalyo Joshua, MP
6. Hon. Fred Kapondi Chesebe, MP
7. Hon. Moses K. Lessonet, MP
8. Hon. Sharif Athman, MP
9. Hon. Richard Tongi, MP
10. Hon. Janet Jepkemboi Sitienei, MP
11. Hon. Ferdinand Wanyonyi, MP

APOLOGIES

1. Hon. Alfa Ondieki, MP
2. Hon. Johanna Ngeno, MP
3. Hon. Fred Ouda, MP
4. Hon. Sophia Abdi Noor, MP
5. Hon. Kasim Tandaza Sawa,MP
6. Hon. Emmanuel Wangwe, MP
7. Hon. Titus Khamala,MP
8. Hon. Mary Wamaua Waithira,MP

IN ATTENDANCE: KENYA NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Johnston Kioko - Clerk Assistant II
2. Ms. Angeline Naserian -Clerk Assistant III
3. Mr. Erick Osoi -Research Officer
4. Brigita Mati -Legal Counsel

AGENDA

1. Preliminaries
2. Consideration and Adoption of report on the NG-CDF (Amendment) Bill 2019 by Hon. Makali Mulu,MP
3. Adjournment and the date of the next meeting.

MIN. NA/DCS/NG-CDF /2019/055: PRELIMINARIES

The Chairperson called the meeting to order at 11.58 am and recited the prayers.

MIN. NA/DCS/NG-CDF /2019/056: CONSIDERATION AND ADOPTION OF THE REPORT ON THE NG-CDF(Amendments) Bill,2019.BY HON.MAKALI MULU,MP

After the deliberation on the agenda item, Members unanimously resolved to oppose the provisions of the Bill.

The Chairperson was however tasked to seek the opinion the Hon. Speaker and to request for the extension of the 21-days dateline to provide for further consultations regarding the Bill.

MIN.NA/DCS/NG-CDF/2019/057: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the meeting adjourned at 12.36pm. The date of the next meeting to be communicated in due course.

Signature



HON RICHARD MAORE MAOKA, CBS, M.P.

(Chairperson)

Date.....

11/09/2019

