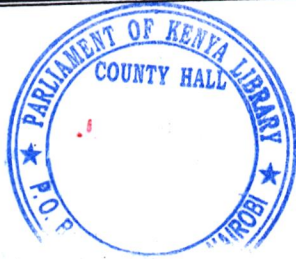


Approved for tabling. *BA*
SNA
30/8/16



REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT - FOURTH SESSION

REPORT ON CONSIDERATION OF THE NATIONAL GOVERNMENT
CONSTITUENCIES DEVELOPMENT FUND (AMENDMENT) BILL, 2016

CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI-KENYA

AUGUST, 2016

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1.0 CHAIRMAN'S FOREWORD

On behalf of the Members of the Select Committee on National Government Constituencies Development Fund and pursuant to provisions of Standing Order 199, it is my pleasure and duty to present to the House, the Report of the committee on its consideration of the consideration of the National Government Constituencies Development Fund (Amendment) Bill, 2016.

The National Government Constituencies Development Fund (Amendment) Bill, 2016, was read a first time on 17th August, 2016 and committed to the Select Committee on National Government Constituencies Development Fund for consideration and thereafter to make a report to the House.

Pursuant to the provisions of Standing Order 120, the House resolved to reduce the publication period of the said amendment Bill from fourteen (14) to six (6) days.

The said Bill was committed to the Select Committee on 20th July 2016 and it is on the basis of this that the Committee makes this report pursuant to Standing Order 127.

The Committee wishes to thank the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support without which its work would not have been possible. The Chairperson expresses gratitude to Committee Members for their devotion and commitment to duty during the consideration of this Legislative proposal.

HON. MOSES LESSONET, MP

CHAIRMAN, SELECT COMMITTEE ON NATIONAL GOVERNMENT
CONSTITUENCIES DEVELOPMENT FUND

2.0 MANDATE OF THE COMMITTEE

Section 50 of the Constituencies Development Fund Act, 2015, expounds on the mandate of the Committee, and states that:-

- (5) The functions of the National Assembly Select Committee are —
- a) 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;
 - b) to oversee the policy framework and legislative matters that may arise in relation to the Fund;
 - c) to continually review the framework set out for the efficient delivery of development programmes financed through the Fund;
 - d) to consider and recommend to the National Assembly, with recommendations, names of persons required to be approved by the National Assembly under this Act, and;
 - e) to carry out any other functions relevant to the work of the Fund.
- (6) The National Assembly 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.

a) Committee Membership

Chairperson

1. The Hon. Moses Lessonet, MP

Vice – Chairperson

2. The Hon. Esther Gathogo, MP

3. The Hon. (Eng.) Nicolas Gumbo, MP

4. The Hon. Mohamed Haji, MP

5. The Hon. Yusuf Chanzu, MP

6. The Hon. Benson Mbai Itwiku, MP

7. The Hon. Raphael Letimalo, MP

8. The Hon. Maina Kamanda, MP

9. The Hon. Peter Kaluma, MP

10. The Hon. Abdikadir Ore, MP

11. The Hon. Mohamed Abass, MP

12. The Hon. John Lodepe Nakara, MP

13. The Hon. Silas Kipkoech Tiren, MP

14. The Hon. Kyengo Katatha Maweu, MP

15. The Hon. Elijah Mosomi Moindi, MP

16. The Hon. Gideon O. Ochanda, MP

17. The Hon. Kamoti Mwamkale, MP

18. The Hon. Joseph O. Ndiege, MP

19. The Hon. David Wafula, MP

b) Secretariat

1. Mr. Ahmad Kadhi

– Clerk Assistant II

2. Ms. Ella Kendi

-Clerk Assistant III

3. Mr. Wilson Dima

- Senior Legal Counsel

4. Mr. Wellington Namenge

- Research Officer II

5. Mr. Apaa Eugene

- Research Officer III

3.0 THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND (AMENDMENT) BILL, 2016

a) Background

The Principal object of this Bill is to amend the National Government Constituencies Development Fund Act, No.30 of 2015 in order to change the formula for the determination of budget ceiling for the constituencies by providing that the budget ceiling for each constituency shall be the amount specified in the section 4(1) of the Act divided equally among all the constituencies. The other objects of the Bill are aimed at streamlining the implementation of the Act by introducing practical deadlines for submission of returns and reports and correcting typographical errors in the published version of the Act.

Clause 1 of the Bill provides for the short title

Clause 2 of the Bill seeks to amend section 3 of the Act so as to align the amendment in Clause 6 with the objects of the Act.

Clause 3 seeks to amend section 5 of the principal Act to provide that any reasonable restrictions or requirement imposed on a particular constituency shall be reported together with the quarterly returns to be submitted to the Cabinet Secretary and the National Assembly. Currently, the restrictions or requirement are to be submitted on a monthly basis.

Clause 4 of the Bill seeks to amend section 15 of the principal Act to correct error in cross- referencing.

Clause 5 of the Bill seeks to amend section 28 of the principal Act by providing that the list of the proposed constituency projects shall be submitted to the Board within three months of the official release of the allocation table by the Cabinet Secretary as opposed to the end of February each year.

Clause 6 of the Bill seeks to amend section 34 of the Act to change the formula for the determination of budget ceilings for the constituencies by providing that the budget ceiling for each constituency shall be the amount specified in section (4) 1 of the Act divided equally among all constituencies.

Clause 7 of the Bill seeks to amend section 38 of the Act by removing the requirement for the monthly tabling of the records showing all receipts, disbursements and actual expenditure and only provides for the tabling records at a meeting of the Constituency Committee.

Clause 8 of the Bill seeks to amend section 51 of the principal Act by providing that the report to be presented by the Board to the National Assembly shall detail a quarterly summary of the project proposals received from the constituencies and disbursement as opposed to monthly summaries.

b) Objectives of the Act

The objectives of the Act are to:

- a) Provide for the establishment and administration of the Fund;
- b) Recognise the constituency as a platform for identification, performance and implementation of national government functions;
- c) Facilitate the performance and implementation of national government functions in all parts of the Republic pursuant to Article 6(3) of the Constitution;
- d) Provide for the participation of the people in the determination and implementation of identified national government development projects at the constituency level pursuant to Article 10(2) (a) of the Constitution;
- e) Promote the national values of human dignity, equity, social, justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized pursuant to Article 10 (2) (b) of the Constitution;
- f) Provide a legislative and policy framework pursuant to Article 21 (2) of the Constitution for the progressive realisation of the economic and social rights guaranteed under Article 43 of the Constitution;
- g) Provide mechanism for the National Assembly to exercise oversight over the performance of specified national government functions at the constituency level as provided for under Article 95 of the Constitution;
- h) Provide for a public finance system that promotes an equitable society and in particular expenditure that promotes equitable development of the country by

making special provisions for marginalized groups and areas pursuant to Article 201 (b) (iii) of the Constitution;

- i) Authorize withdrawal of money from the Consolidated Fund as provide under Article 201(2 (c) of the Constitution;
- j) Provide for mechanism for supplementing infrastructure development at the constituency level in matters falling within the functions of the national government at that level in accordance with the Constitution;
- k) Provide framework for citizens led development to assist the national government in planning and prioritizing the use of its resources;
- l) Create harmonious relationship between citizens and the national government and its officers in local development;
- m) Provide platform for citizens participation in service delivery; and
- n) Build local accountability and transparency in the use of resources.

4.0 CONSIDERATION OF THE LEGISLATIVE PROPOSAL

a) Submissions

The Committee on 22ND August, 2016 wrote to the following stakeholders requesting them to submit their comments on the said Bill;

- i. Office of the Attorney General & Department of Justice;
- ii. The National Treasury;
- iii. State Department for Planning & Statistics;
- iv. National Government Constituencies Development Fund Board;
- v. Kenya Law Reform; and
- vi. The Institute for Social Accountability.

Pursuant to Article 118 (1) (b) of the Constitution and Standing Order 127 (3), an advert was placed in the Daily Nation on 19th August 2016 inviting interested members to submit any representations they may have on the National Government Constituencies Development Fund (Amendment) Bill, 2016. The Representations were to be submitted on or before 24th August, 2016.

b) Brief from the Parliamentary Legal Counsel

A representative of the Director of legal services, Mr. Wilson Dima- Senior Legal Counsel, took the committee through the proposed amendments contained in the NG-CDF (Amendment) Bill, 2016. He pointed out that the Bill contains seven amendments as follows:

1. **Clause 2** is seeking to amend **section 3** of the NG-CDF Act by-
 - a) Proposing to delete the word “equity” in paragraph (e), the reason being that section 34 had proposed that the money would be divided equally among all constituencies. This will necessitate the deletion of the word “equity” so as to align the amendment in clause 6 with the objects of the Act that provides for equal sharing and not equitable sharing of funds.
 - b) Proposing to delete paragraph (i) because the whole paragraph is talking about equitable yet the Bill is equality in the sharing of the Fund.
2. **Clause 3** is seeking to amend **section 5 (7)** by
 - a) Proposing to delete the word “monthly” and substituting therefor the word “quarterly”. This was a correction because the Board under section 51 of the Principal Act submits its returns quarterly and not monthly.
 - b) Adding the word “National Assembly” after the words “Cabinet Secretary” because the returns are submitted to both the Cabinet Secretary and National Assembly as outlined in the Section.
3. **Clause 4** is seeking to amend **section 15 (3)** to correct an error in cross-referencing by-
 - a) Deleting the word “five” and substituting therefor the word “seven” so as to correct an error because in section 15 of the principal Act, the members who are supposed to be appointed are seven and not five
 - b) Deleting the words “paragraph (c)” and substituting therefor the words “paragraph (e)” so as to correct to conform to section 15 of the principal Act.
4. **Clause 5** is seeking to amend **section 28** of the principal Act by deleting subsection (1) and substituting therefor with the new subsection (1) - “The list of the proposed constituency projects shall be submitted to the Board within three months of the

9

official release of the allocation table by the Cabinet Secretary or such other time as may be determined by the Board”.

The amendment has two effects-

- a) It has amended timeline of submitting the proposed projects
 - b) Instead of the determination being made by the Cabinet Secretary, the determination is now being made by the Board.
5. **Clause 6** is seeking to amend **section 34** of the Principal Act, by deleting subsection (1) and substituting therefor the following new subsection (1) – “(1) The budget ceiling for each constituency shall be the amount specified in section 4(1) divided equally among all constituencies.”
- He observed that if the committee adopts this proposed amendment, then the Board would not have funds to run its operations.
6. **Clause 7** is seeking to amend **section 38** paragraph (a) of the Principal Act by deleting the words “in every month”. This is remove the requirement for monthly tabling of the records showing all receipts, disbursement and actual expenditure and only provides for the tabling of such records at a meeting of the constituencies committee
7. **Clause 8** is seeking to amend **section 51** (1) of the Principal Act by deleting the word “month” appearing in paragraphs (a) and (b) and therefor substituting with the word “quarter”. This he noted was a correction because the Board under section 51 (1) of the Principal Act submits its returns quarterly and not monthly.

c) Submissions by National Government Constituency Development Fund Board

Mr. Yusuf Mbuno, the Acting Chief Executive Officer of the NG-CDF Board, in his submissions on behalf of the Board, on 23rd of August 2016, proposed further additional amendment to section 6 of the Bill by inserting the words “and subject to the provision in section 23(1) and 8(1)” after the phrase 4(1). With the proposed insertion, Section 6 of the Bill will therefore read:-

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Section 34 of the Principal Act, by deleting subsection (1) and substituting therefor the following new subsection (1): –

“(1) the budget ceiling for each constituency shall be the amount specified in section 4(1) divided equally among all constituencies subject to the provision in section 23(1) and 8(1).”

Further, the Board wished to propose an additional amendment to section 48 of the Principal Act by inserting the words “Notwithstanding this provision, a constituency may request for authority of the board to allocate more than the stated percentage” at the end of the section.

The board observed that the amendment will enable constituencies that are very needy in terms of bursary and related issues, for example those in urban and marginal areas to allocate more money for the purpose with concurrence of the Board.

5.0 COMMITTEE RECOMMENDATION

1. The Committee recommends that the National Assembly adopts the Bill subject to the change in section 6 of the Bill as recommended by the NG-CDF Board, by inserting the words “and subject to the provision in section 23(1) and 8(1)” after the phrase 4(1). With the proposed insertion, Section 6 of the Bill will therefore read:-

Section 34 of the Principal Act, by deleting subsection (1) and substituting therefor the following new subsection (1): –

“(1) the budget ceiling for each constituency shall be the amount specified in section 4(1) divided equally among all constituencies subject to the provision in section 23(1) and 8(1).”

2. The Committee objected to the additional amendment proposed by the Board to section 48. The Board had proposed an additional amendment to section 48 of the Principal Act by inserting the words “Notwithstanding this provision, a constituency may request for authority of the board to allocate more than the stated percentage” at the end of the section.

Considering that the Bill does not seek to amend section 48 of the ACT, the proposed amendment would have been contrary to section 133 (5) of the Standing Orders which states that;

‘(5) No amendment shall be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in logical sequence to the subject matter of the bill’

3. The Committee recommends that the section 28 of Principal Act be amended by deleting subsection (1) and substituting therefor the following new (sub-section) -

“(1) The list of the proposed constituency projects shall be submitted to the Board within three months of the official release of the allocation table by the Board or such other time as may be determined by the Board”

This would enable the board and not the Cabinet Secretary to officially release the allocation table before the Select Committee on National Government Constituencies Development Fund

SIGNED.....

HON. MOSES LESSONET, MP
CHAIRMAN, SELECT COMMITTEE ON NATIONAL GOVERNMENT
CONSTITUENCIES DEVELOPMENT FUND

6.0 ANNEXES

1. Minutes
2. Invitation for Submission of Memoranda
3. Submitted memoranda
4. Report Adoption List

ANNEX I - MINUTES

MINUTES OF THE 19TH SITTING OF THE SELECT COMMITTEE ON NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND, HELD ON TUESDAY 25TH AUGUST, 2016 IN THE BOARDROOM, 9TH FLOOR HARAMBEE PLAZA, PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT

1. Hon. Moses Lessonet, MP - Chairperson
2. Hon. Benson Mbai Itwiku, MP
3. Hon. Yusuf Chanzu, MP
4. Hon. Kyengo Katatha Maweu, MP
5. Hon. Joseph Ndiege, MP
6. Hon. Elijah Mosomi Moindi, MP
7. Hon. Raphael Letimalo, MP
8. Hon. Kamoti Mwamkale, MP
9. Hon. David Wafula, MP
10. Hon. Mohamed Abass, MP
11. Hon. Silas Tiren, MP

ABSENT WITH APOLOGY

1. Hon. Esther Gathogo, MP - Vice – Chairperson
2. Hon. Eng. Nicolas Gumbo, MP
3. Hon. Abdikadir Ore, MP
4. Hon. Gideon Ochanda, MP
5. Hon. George P. Kaluma, MP
6. Hon. Mohamed Haji, MP
7. Hon. Maina Kamanda, MP
8. Hon. John Lodepe Nakara, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Apaa Elisa Eugene - Researcher and Policy Analyst
2. Wilson Dima - Senior Legal Counsel

MINUTE NO. 98/2016:

PRELIMINARIES

The meeting was called to order .The sitting commenced with a word of prayer.

MINUTE NO.99/2016

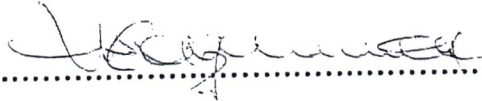
CONSIDERATION AND ADOPTION OF THE REPORT ON THE NG-CDF (Amendment) BILL, 2016

In response to the invitation for submission of memoranda, Members were informed by the representative of the Director of legal services that only the NG-CDF Board had submitted a memorandum on the amendment Bill.

Members considered and unanimously adopted the Report on the National Government Constituencies Development Fund (Amendment) Bill, 2016.

MINUTE NO.100/2016 ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Twelve o'clock.

SIGNATURE..........

CHAIRPERSON

DATE.....

ANNEX II –
INVITATION FOR
MEMORANDA

REPUBLIC OF KENYA



NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT – FOURTH SESSION

In Matter of consideration by the National Assembly of the National
Government Constituencies Development Fund (Amendment) Bill, 2016

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Further, Standing Order 127(3) states that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House".

The National Government Constituencies Development Fund (Amendment) Bill, 2016 underwent First Reading on 17th August, 2016 and stands committed to the Select Committee on National Government Constituencies Development Fund for consideration and thereafter to submit a report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the public to submit any representations they may have on the said Bill. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Wednesday 24th August, 2016 at 5.00 pm.

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

DATE

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Tel. +254-020-221291
Fax: +254-020-2243694
E-mail: clerk@parliament.go.ke
When replying please quote



Clerk's Chambers
National Assembly
Parliament Buildings
P.O. Box 41842 -00100
NAIROBI, Kenya

NATIONAL ASSEMBLY

KNA/CDF/CORRE/2016/021

22nd August, 2016

✓ Prof Githu Muigai, EGH, FCI Arb., SC
Attorney General &
Department of Justice
NAIROBI

Dr. Kamau Thugge, CBS
Principal Secretary
The National Treasury
NAIROBI

Saitoti Torome
Principal Secretary
State Department for Planning & Statistics
Ministry of Devolution & Planning
NAIROBI

Yusuf Mbuno
Ag, Chief Executive Officer
Constituencies Development Fund Board
Harambee Plaza
NAIROBI

Wanjiru Gikonyo
National Coordinator
The Institute for Social Accountability
Number 1, Wendy Court
David Osieli Road, off Waiyaki Way
P O Box 48353 – 00100
NAIROBI

Joash Dache, MBS
Secretary/CEO
Kenya Law Reform Commission
3rd Floor, Reinsurance Plaza
Taifa Road
NAIROBI

Dear

Sw,

**RE: SUBMISSION OF COMMENTS ON THE NATIONAL GOVERNMENT
CONSTITUENCIES DEVELOPMENT FUND (AMENDMENT) BILL, 2016**

The National Assembly Select Committee on National Government Constituencies Development Fund (N.G.C.D.F) is established pursuant to Section 50 of the NGCDF Act 2015 and the Standing Orders of the National Assembly. The Mandate of the Committee is to oversee the implementation of the Fund, consider and recommended to the House any matter requiring action by the National Assembly pursuant to the Act and perform any other duties as may be assigned to it by the Committee from time to time.

The National Government Constituencies Development Fund (Amendment) Bill, 2016 (copy attached) underwent First Reading on **17th August, 2016** and committed to the Select Committee on National Government Constituencies Development Fund for consideration and thereafter make a report to the House.

Pursuant to the provisions of Standing Order 120, the House resolved to reduce the publication period of the said amendment Bill from fourteen (14) to six (6) days.

Pursuant to Article 118 (1) (b) of the Constitution and Standing Order 127 (3), the Committee invites you to submit your comments on the said Bill to reach the office of the Clerk of the National Assembly **on or before Friday 26th August, 2016**

Yours

Sw

Michael R. Sialai

**MICHAEL R. SIALAI, EBS
FOR: CLERK OF THE NATIONAL ASSEMBLY**

REPUBLIC OF KENYA



Telegraphic Address
'Bunge', Nairobi
Tel. +254-020-221291
Fax: +254-020-2243694
E-mail: clerk@parliament.go.ke
When replying please quote

Clerk's Chambers
National Assembly
Parliament Buildings
P.O. Box 41842 -00100
NAIROBI, Kenya

NATIONAL ASSEMBLY

KNA/CDF/CORRE/2016/021

22nd August, 2016

Prof Githu Muigai, EGH, FCI Arb., SC
Attorney General &
Department of Justice
NAIROBI

Dr. Kamau Thugge, CBS
Principal Secretary
The National Treasury
NAIROBI

Saitoti Torome
Principal Secretary
State Department for Planning & Statistics
Ministry of Devolution & Planning
NAIROBI

Yusuf Mbuno
Ag. Chief Executive Officer
Constituencies Development Fund Board
Harambee Plaza
NAIROBI

Wanjiru Gikonyo
National Coordinator
The Institute for Social Accountability
Number 1, Wendy Court
David Osieli Road, off Waiyaki Way
P O Box 48353 – 00100
NAIROBI

✓ Joash Dache, MBS
Secretary/CEO
Kenya Law Reform Commission
3rd Floor, Reinsurance Plaza
Taifa Road
NAIROBI

ANNEX III –
MEMORANDA

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National Government Constituencies Development Fund Board
Harambee Plaza, 10th Floor
Junction of Haile Selassie Avenue & Uhuru Highway
P.O Box 46682-00100
Nairobi, Kenya
Tel: 020-2230015/9, 2230027, 2230032 | Cell: 0709894000
Email: info@cdf.go.ke | Website: www.cdf.go.ke

NG-CDF BOARD

August 19, 2016

OUR REF: NG-CDFB-CEO/KNA/VOL.003(49)

Mr. Justin N. Bundi, CBS
Clerk of the National Assembly,
The National Assembly of Kenya,
Parliament Road,
P O Box 41842-00200,
NAIROBI

(Handwritten signature)
23/8

Dear Sir,

RE: SUBMISSION OF COMMENTS ON THE PROPOSED NATIONAL GOVERNMENT
CONSTITUENCIES DEVELOPMENT FUND (AMENDMENT) BILL, 2016 -2ND READING

Reference is made to the above matter.

Having perused through the proposed Amendment Bill, the Board proposes further additional amendments to Section 6 of the Bill by inserting "and subject to the provision in section 23(1) and 8 (1)" after the phrase "section 4 (1)". With the proposed insertion, Section 6 of the Bill will therefore read: -

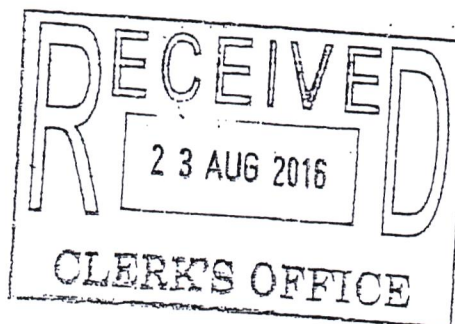
Section 34 of the Principal Act is amended by deleting sub-section (1) and substituting therefor the following new subsection (1): -

"(1) The budget ceiling for each constituency shall be the amount specified in section 4(1) divided equally among all constituencies subject to the provisions of section 23(1) and 8 (1)"

Further, the Board wishes to propose additional amendments as follows: -

Section 48 of the Act is amended by inserting the words "Notwithstanding this provision, a constituency may request for the authority of the Board to allocate more than the stated percentage" at the end of the section.

(Handwritten notes)
2
KADH
pls deaf
FA
23/8



ANNEX IV – ADOPTION LIST



SELECT COMMITTEE ON NATIONAL GOVERNMENT CONSTITUENCIES
DEVELOPMENT FUND

MEMEBERS ATTENDANCE SCHEDULE

DATE 25/08/2016 Time 10:00 Am VENUE HARAMBEE PLAZA.

AGENDA ADOPTION OF THE REPORT ON THE MG-CDF
(Amendment) Bill, 2016

	NAME	SIGNATURE
1	Hon Lessany Masedi	
2	Hon Mohamed Abasi	
3	KAMOTI MWAMKALE	
4	HON MSONI E. MOINBI	
5	Hon David Wajulu	
6	HON KYENGO KATAJIA MATHAI	
7	Hon Silas K. Tiper	
8	Hon Raphael Letimbo	
9	HON. JOSEPH O. NDIEGE	
10	Hon Benson Muli	
11	Hon Yusuf Chanzu	
12		
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16		
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18		
19		

AHMAD KADHI

FOR -CLERK OF THE NATIONAL ASSEMBLY