

CONSTITUENCIES DEVELOPMENT FUND BILL, 2003

A SYNOPSIS OF EMERGING ISSUES*

DELIBERATIONS ON THE TEXT PARTS I – X (ONE BY ONE)



Presented to:

**The Parliamentary Departmental Committee on Finance,
Planning and Trade**

BY

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BACKGROUND

The current political dispensation is driven by the belief and predicated upon the concept of "sovereignty of the people" which is a clear departure from the "polarized and dictatorial" systems that were inherent in the past two regimes. This spirit is aptly captured in the Preamble of the Draft Constitution currently being debated under the Bomas Processes. The new paradigm of political and constitutional governance envisaged by the National Rainbow Coalition Government and enthusiastically embraced by the Kenyan citizenry, seeks to deepen and broaden the space for popular participation in development and all matters that affect their lives. This dispensation promises intricate engagement of parliamentarians as representatives and mouthpieces of the Kenyan electorate.

Changes in the theory of political and economic governance must percolate into the entire national motif. Such a shift must find expression in other developmental processes which together influence the welfare of the citizenry. The envisaged dimension of governance integrates within itself the imperative for decentralization which emphasizes the whole concept of devolution of power from the centre to the periphery. This spirit is adequately echoed in our various policy documents including the PRSP/MTEF process, the current National Development Plan (2002-2007) and the Economic Recovery Strategy Paper (2003-2007). These policy instruments variously emphasize the need to adopt multi-channel delivery systems as well as multi-sectoral approaches to poverty eradication and rural development initiatives. It is against this backdrop of deconcentration and dispersal of the instruments and mechanisms of governance that the Constituency Development Fund has been conceived and must be implemented.

Therein lies the monumental challenge. The success of the Constituency Development Fund depends on the extent to which it will deviate from the mere cosmetic interventions that were prevalent in the past, towards effective devolution of power to the lower levels of governance. Further, the initiative is expected to offer a rational and structured alternative to the hitherto infamous Harambee System of grassroots resource mobilization as recommended by the Cockar Tribunal Report after their extensive consultations. Consequently, the new approach should signify a move towards lesser and lesser manifestation of government muscle and more robust public participation and engagement in governance and community development.

The mainstream print and electronic media is currently undated with motivated analyses and comments on the perceived merits and demerits of the CDF initiative. Members of parliament across the political divide while unanimous on the need for this fund, are yet to identify a concrete and workable framework for this Fund on a continuous and sustainable basis.

The foregoing sections present a basic framework for analyzing and responding to the diverse concerns that continue to evolve in the current debate on the Constituencies Development Fund.

THE ANALYTICAL FRAMEWORK

The challenge of attaining an equitable and sustainable framework for realizing widespread development across the 210 constituencies will be both complex and daunting. The envisaged Constituency Development Fund will be launched in the backdrop of various past government rural development initiatives which have been implemented with mixed results.

The proposed framework of implementation should take the following core considerations into account;

- The need to adapt and **realign constituency development priorities with broad national development goals** and policies
- The need to provide **viable avenues for citizen participation** in all aspects of the projects lifecycle
- The imperative to conform to the **existing public expenditure and disbursement framework**
- The need to preserve **the doctrine of separation of powers** between the legislature and the executive
- The need to **adequately empower parliamentarians** in the running of development projects **in their own constituencies**
- The need to utilize **existing district-based planning, and development coordination structures** such as the DDC without letting their inherent weaknesses to suppress success factors for the new Fund
- The need to provide **viable and practical avenues for grassroots participation** without compromising the role of technical experts in the project management processes
- The need to **evolve multi-channel delivery system and adopt strategies that entrench broad-based participation** from private sector, civil society and the religious community.
- Diversity of **development scenarios across the 210 constituencies** of Kenya.

Having established the pillars for analysis it is now imperative ~~that~~ to delve into the core insights that have emerged from the published Bill. Firstly, it is instructive to identify and explore some of the strengths and the perceived flaws in the draft Bill.

It is important to appreciate the fact that this Bill is by and large a competent piece of legislation. Indeed it does not escape notice that the Drafter made considerable effort to respond to the core concerns and complaints that were leveled against the *harambee* system as a mode of grassroots resource mobilization and development. Some of the salient observations regarding the Bill includes the following strengths and weaknesses.

STRENGTHS

- Stands out as a bold poverty reduction strategy that focuses on the constituency as the basic focal point of development
- Empowers the MPs to be active players in grassroots development
- Provides the Legislature with an opportunity to participate in formulation of development priorities
- Provides a territorial focus for development, which emphasizes outcomes for the citizens rather than outputs for the bureaucrats.
- Advances and recognizes the doctrine of separation of powers by conferring the projects implementation task to the executive arm of government
- Attempts some form of horizontal devolution to parliament and other stakeholders
- Seeks a collaborative venture with other development partners at the grassroots level while providing avenues for community-based initiatives
- Offers considerable potential for improving constituent-legislature relations
- Attempts to diminish and compensate for the widespread inequalities in development across the 210 constituencies in the Republic of Kenya.

POTENTIAL AREAS FOR FURTHER CRITICAL DEBATE

Certain aspects of the Bill may need to be reviewed and refined further to respond to the following concerns:

- The **project development framework falls out of tune with the current thinking in development**, which emphasizes participatory approaches in all stages of a project's life cycle
- The Bill hardly provides deliberate **mechanisms for citizen engagement** at project identification, prioritization, implementation, monitoring and evaluation
- **Estimates Committee still looks like a rubber-stamp institution** with no major initiative role
- Does not adequately enhance and legitimize the role of elected members
- **The DDCs are left structurally intact** while questions of their legality remain unresolved. Interestingly, the newly created District Projects Committees seems to have semblance with what used to be the District Executive Committee under the DFRD system. Yet even the current National Development Plan recognizes the severe gaps in entrusting the DDCs with the administration of projects and service delivery at the grassroots levels.

- **The Bill envisages horizontal devolution** which really does not add as much value as vertical devolution of power. Hence it provides no clear mechanisms for devolved decision making at the grassroots level. It fails to recognize that true devolution simply means *empowering people politically*
- **Does nothing to preempt the possibilities of political interference** in project selection and implementation processes since no countermanding measures are provided in case of any malfeasance on the part of the MP. With the emergence of a new balance of power the possible shifts in authority as a key risk factor in the implementation and continuity of projects is not sufficiently addressed.
- The envisaged framework while rightly conferring the responsibility of implementation to the executive, **hardly stipulates any mechanism for the establishment of/or management through grassroots governance structures** that may need to be established to operationalize fund activities (e.g Constituency Offices as constituency administrative centres)

Whereas the above issues represent the broad concerns regarding the Bill, an incisive dissection of the Bill has further revelations that must be synthesized, discussed and addressed before its adoption and implementation.

THE CONSTITUENCIES DEVELOPMENT FUND BILL, 2003: TOWARDS A SYSTEMATIC CRITIQUE

PART I:

Section 2: Interpretations

- i) The proposed **Estimates Committee** of parliament be replaced by a **Constituencies Liaison Committee** whose functions shall include among others;
 - Oversight over the entire framework and processes of project implementation under the CDF
 - Utilize the outputs and insights of Parliamentary Budget Office in their work
 - Handle all policy and legislative concerns that may arise in relation to the Fund
 - Receives and Deliberates on the Annual Report of Operations for the Constituencies Development Fund
- ii) The Appointment of the **Officer Administering the Fund** should be subject to ratification by parliament. The Minister for the time being responsible for Finance shall present three nominees from amongst whom parliament shall appoint one to the post.

PART 2:

Section 2(a) Allocations to the Constituencies Development Fund

The current precedent by the Minister to allocate a meagre Kshs. 2 Million per constituency fundamentally deviates from the spirit of consensus upon which the draft Bill has been promulgated. This allocation totals Kshs. 420 million which is represents a paltry 0.175% "of all Collected government revenue" (Kshs. 240 Billion). **Incidentally this figure is equivalent to only 10 % of the actual allocation in the MTEF Estimates presented to the Minister for approval by the Parliamentary Service Commission.** On the basis of this initial experience it would be a lot wiser for this Bill to compel the Minister to honour the government's obligations with respect to the Statutory limits established under it i.e to allocate 2.5% of all collected government revenue in every financial year.

Section 5(2): Composition of the National Committee

The determinant for establishing an inter-ministerial committee of this nature should take cognizance of their relevance and strategic contribution to basic welfare and resource needs of the populace. This underscores the need to broaden the composition of the Committee to further include Ministries of Local Government as well as the Ministry of Water resources. Such inclusion is desirable due to the fact that their core functions address the needs for grassroot and rural development which is the focus of this initiative.

5(2e) To reduce excessive executive clout in the composition of this committee, there is need to bring in non-state expertise drawn from across the visible sectors of the economy. This section should further net in such crosscutting concerns as gender parity, youth participation, private sector inclusion as well as concerns of marginalized groups to achieve a balance of views and perspectives. The net effect of this amendment would be an increase in membership of this committee from the current nine (9) to at least thirteen (13) members.

Section 11 (1) The Five Per centum (5%) Allocated for the Emergency Reserve

Whereas this Bill proposes to address the possibilities of unforeseen emergencies and calamities that may be unique to the respective constituencies, it ought to be remembered that this is neither appropriate nor sustainable. Indeed recent trends indicate that the need to establish an effective mechanism towards emergency response requires a coordinated national response rather than piecemeal constituency by constituency intervention.

Instead parliament should hasten the enactment into law of a National Disaster Response and Coordination Bill which would provide a systematic, coordinated and sustainable framework for comprehensively address national emergencies and disasters. This would free the entire constituency resource package for its desired developmental purposes.

PART 3:

Section 12 Submission of Proposals by the MPs

This section ought to stipulate a clear mechanism for the origination and collation of project proposals at the constituency level. As currently constituted, there is an implicit assumption about the processes of prioritization and selection of projects by the constituents. Yet the potentials for individual MPs to come up with development projects that reflect their personal priorities and preferences cannot be gainsaid.

Prior to this, there is need to provide a mechanism for developing a three year rolling Constituency Development Action Plan which stipulate broad consensus on development priorities emanating from the diversity and character of the various stakeholders in the constituency.

Section 15/16 Project Description Forms

While placing a request for project funding in a given year, there is need to make provisions for the forms to indicate clearly the amounts allocated in the previous year and amounts already spent in the same project. This would pre-empt the possibility of constituencies coming up with projects that are abandoned midstream on flimsy grounds. It would act as a guarantee for continuity and sustainability of projects across the constituencies.

Section 20; Basis for Budget Ceiling

The purpose of devolution and decentralization is usually to address the diversities and peculiarities of the various off-centre territories as well address the need to spread the benefits of development equitably. It may be necessary to rethink the idea of establishing uniform ceiling for all constituencies across the eight provinces of Kenya.

PART IV: TYPES OF PROJECTS

Section 24; Role of MPs Vs. Constituency Development Committee

Having proposed the establishment of a Constituency Development Committee (CDC) as the basic channel for delivery of constituency development priorities, it is only fair that this committee is empowered in all project decision processes. For this reason the provisions of Section 24 which gives disproportionate powers to MPs need s to be amended to incorporate the CDC.

PART V:

Estimates Committee to be replaced by a Constituency Liaison Committee

As currently constituted the functions of the proposed Estimates Committee would safely be covered under the Budgeting and Planning Committee as proposed in the Draft Constitution. In the context of the Constituencies Development Fund, there is however need to establish a separate Standing Committee of the House to named **The Constituency Liaison Committee (CLC)**. Such a committee would retain the membership composition as proposed in this Bill. It is this committee that would assume overall legislative oversight on the operations of the Fund. However this committee would benefit immensely from the technical and budgetary expertise to be drawn from the Parliamentary Budget Office. Hence I propose that any mention of the Estimates committee shall be construed to mean the CLC if this amendment is adopted.

PART VI: Project implementation and monitoring

Section 32: People to be involved in implementation and monitoring of projects

There is need to make specific provisions to integrate the peoples participation in the implementation and monitoring of projects at the constituency level. For this is the surest way of guaranteeing sustainability and success of constituency projects.

Section 33 Tendering and procurement

There is an elaborate and established procurement process currently in force which regulates all forms of procurement of goods and services by any government departments and agencies. It is thus necessary to align and readapt the proposed system of procurements to the existing set up.

PART VII: DISTRICTS PROJECTS COMMITTEES

Section 43 (1): Composition of the Districts Projects Committees

There is need to readjust the composition of this committee to effectively mirror the character and concerns integrated at the National Committee. For this reason critical non-state sectors and players including the business community, the religious bodies, CBOs, NGOs, youth and women groups as well as other marginalized groups may need to be included in the Committee. The net effect of this amendment would be to increase the membership especially under category 43 (1.f)

PART VIII: DISTRICT DEVELOPMENT COMMITTEE

The fundamental concerns regarding the legality or otherwise of the DDCs has been overwhelming, yet they remain central to national planning and development processes. Indeed considerable resources continue to be allocated for their operations. It is no secret that there is general disquiet among a cross section of the

citizenry including honorable members regarding their relevance and performance as vehicles for pursuing devolved and equitable development at the grassroots level.

The imperative therefore is to place their establishment and operations within a comprehensive legislative context. It is only then that we can identify their effective role in the operation of the CDF.

FIRST SCHEDULE: Contents of the Constituency Projects Submission Form

This form should be modified to include two other signatures drawn from the Constituency Development Committees popularly elected at that level. Such an inclusion would ensure that the submitted list of projects accurately reflects the consensus generated at the CDC level. As currently constituted, this form provides the MP with absolute powers to amend the list without reference to the originating organs and priorities agreed by the constituents.

SUGGESTIONS ON THE WAY FORWARD

The imperative to come up with an effective framework for the efficient delivery of development programmes at the grassroots level is both daunting and intricate. We propose three interventions as a way of enriching the dialogue towards developing an effective law and operational framework for the Constituency Development Fund.

1. Desktop Research

An intensive five-day study and documentation of alternative grassroots development frameworks across the commonwealth and the emerging legislatures will be necessary. This study will seek to contextualize the proposed Bill against the core considerations listed at the beginning of this synthesis. In addition it will delve into the other non-financial consequences of the proposed framework including:-

- Country experiences in devolved governance structures with particular reference to Funds established outside the Supply System
- Impact of devolution on Legislature-constituent relations
- Integrating the Fund objectives and operations within the other on-going national development processes e.g. PRSP, MTEF and ERSP

2. Comparative Country Study Tours

Before implementing the Fund there is need to ratchet our theoretical analyses with actual experiences of especially countries within the developing world which have implemented similar structures. In this list, we may consider countries like Zimbabwe (growth point policy for rural development), Zambia (Ward Committee System of localized governance) and Chile.

The proposed tour would have **four** components as follows:

- Discussions with Ministers for Finance / local Government
- Discussions with members of the Legislature or local councils
- Discussions with the Coordinating organ for the Fund
- Discussions with constituents in two selected rural settings

A small team of 4 MPs, one parliamentary officer from the Clerk's Department and one Consultant will suffice. The proposed duration is three days.

3. Dissemination and Synthesis Workshop for MPs/Stakeholders

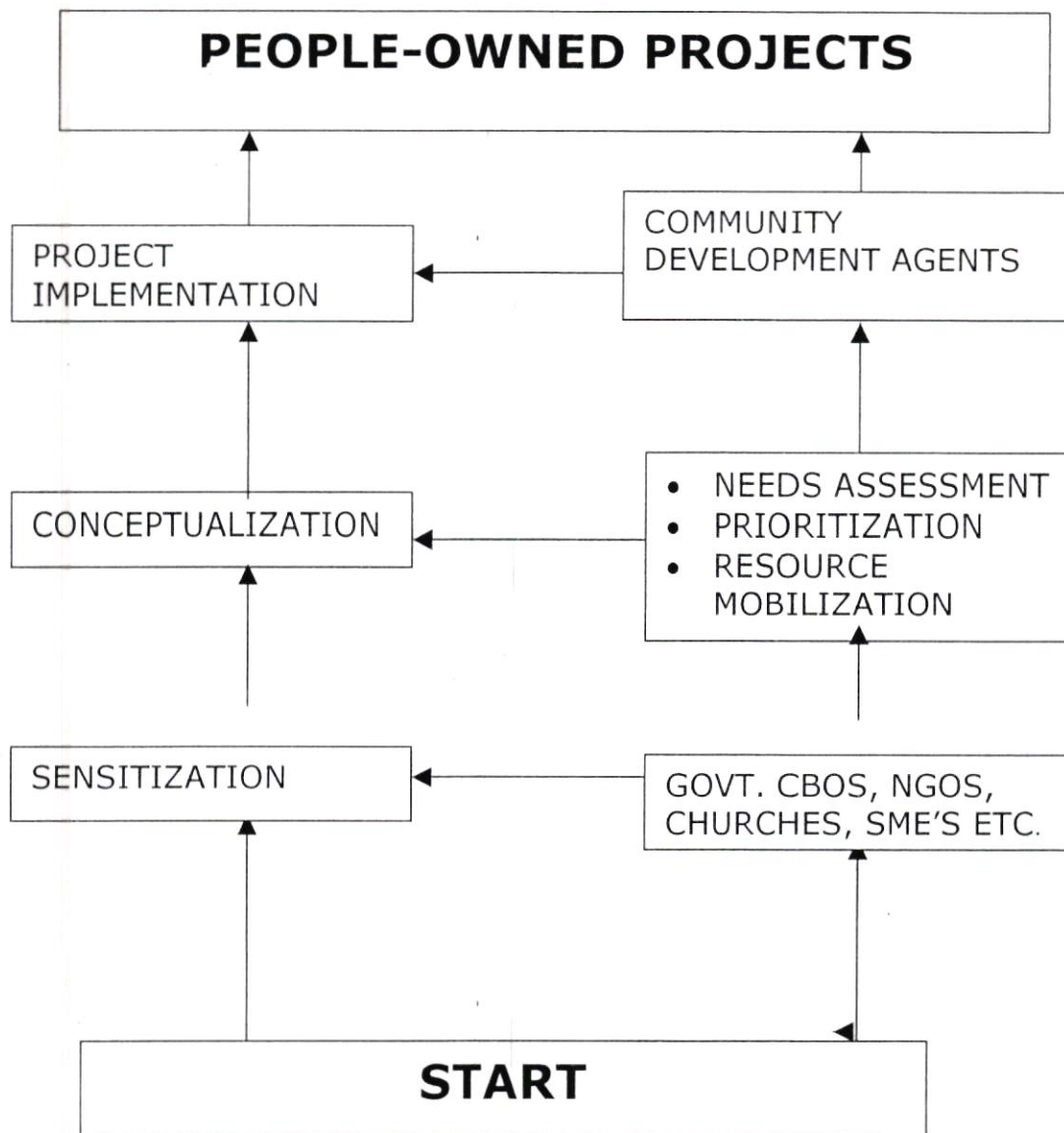
The proposed three-day workshop will seek to fulfill three concurrent purposes. First it will provide a forum for MPs as key stakeholders in constituency development processes to be sensitized and informed about all aspects and implications of the proposed Bill. Secondly, it will receive and refine the diverse propositions that will have emanated from the two information building process suggested above. Finally, it will be an opportunity to consolidate broad consensus on all contentious issues regarding the Bill and its operational and financial implications.

Preparatory activities listed in the proposed implementation plan, would be finalized before the conclusion of the budget debates hence paving the way for its debate and adoption in parliament when the House adjourns for Bomas II.

PROPOSED CDF IMPLEMENTATION SCHEDULE

Item	ACTIVITY	MONTH				
		July	Aug	Sept	Oct	Nov
1.	Desktop Research					
2.	Comparative Study Tours					
3.	Parliamentarians' Workshop					
4.	Presentation/Debate of Bill in Parliament					
5.	Establishment of Implementation Structures					
6.	Launch of the Fund					

FLOW OF PROJECT ACTIVITIES IN THE SUGGESTED PARTICIPATORY FRAMEWORK



PARLIAMENT		
CLC	MP	AUDIT
Oversight	Representations	Financial
Legislative Agenda	Disseminations	Oversight
Policy Concerns	of Legislative Concerns	
Input into Budget		

NATIONAL LEVEL	
MOH	NC-CDF
Disbursement	Policy Issues
Accounting	Operational / Implementation
Internal Control	Oversight
Financial Policy	Financial Management
Budget Processes	Project Monitoring
	Technical Support
	Interministerial Coordination

DISTRICT	
DDC	DPC
Overall Executive Control	Project Technical Evaluation
Administrative Oversight	Interpretation of Broad Policy implications
Liason	Interpretation of DDPs
Inter Ministerial Forum	Coordination of Implementation
	Monitoring Const. Project
	Liaison with Local Authorities

CONSTITUENCY LEVEL		
Constituency Development Committee		
Secretariat	MP	The People/Civil Society
Constituency Feedback	Presents CP Schedules	Discuss various Proposals
Project identification	Provides Feed Back to Parliament	Generation of project ideas
Screening/selection		Monitoring of project implementation
Technical Review		

