



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT (FIRST SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATIONS FROM THE CHAIR

_____ (No. 031 of 2022) _____

ON

**THE STATEMENT BY THE NATIONAL TREASURY
AND ECONOMIC PLANNING ON THE STATUS OF DISBURSEMENT OF
NATIONAL GOVERNMENT CONSTITUENCY DEVELOPMENT FUNDS FOR
THE FINANCIAL YEAR 2022/2023**

Honourable Members

1. I wish to bring to your attention the fact that I have received a Statement from the Cabinet Secretary for the National Treasury and Economic Planning regarding the effect of the Supreme Court's decision on the matter of the National Government Constituencies Development Fund (NG-CDF) Act and the accrued liabilities of the Constituencies Development Fund (CDF) and NG-CDF.
2. In his Statement, **Honourable Members**, the Cabinet Secretary reports that the Attorney General has advised as follows:
 - (i) **THAT**, all liabilities properly incurred by the CDF and the NG-CDF before the decision of the Supreme Court should be settled by the National Government;
 - (ii) **THAT**, the NG-CDF Act of 2015 has itself not been expressly **declared** unconstitutional despite the observations by the Supreme Court. The matter of the constitutionality or otherwise of the Act is a matter still pending determination by the High Court in *Wanjiru Gikonyo and Another versus The National Assembly and Eight Others* (2016) eKLR, and as such, express declaration may only be made by the High Court in line with its jurisdiction pursuant to Article 165(3) of the Constitution;

(iii) **THAT**, with regard to the matter of Interim Independent Electoral and Boundaries Commission (2011) eKLR, the Supreme Court held that, and I quote,

*"Quite clearly, the High Court has been entrusted with the mandate to interpret the Constitution. This empowerment by itself, however, does not confer upon the High Court an exclusive jurisdiction: for, **by the appellate process**, both the Court of Appeal and the Supreme Court are equally empowered to interpret the Constitution, **certainly in respect of matters resolved at first instance by the High Court.**"*

Only where litigation takes place entailing issues on constitutional interpretation, must the matter come in the first place before the High Court, with the effect that interpretation of the Constitution by both the Court of Appeal and the Supreme Court will have been limited to the appellate stages."

Honourable Members

3. Based on the foregoing guidance, the Attorney General has therefore advised that the NG-CDF Act of 2015 technically remains in force until such express declaration is formally made by the High Court or other Superior Courts as may be seized of the matter on appeal.

4. In light of the advice from the Attorney General, the National Treasury and Economic Planning confirms that it will commence disbursement to the NG-CDF by tranches of Ksh. 2 Billion on a weekly basis with effect from 9th December 2022, and will have disbursed a total of 44.289 Billion by the 23rd week of disbursement.

The House is accordingly informed.

I thank you!



THE RT. HON. MOSES M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Thursday, 1st December, 2022