

## **PRESS STATEMENT**

### **CIVIL SOCIETY ORGANIZATIONS WIN ON THE CDF CASE: PETITION NO. 1 OF 2018**

**09 August 2022...The Institute for Social Accountability (TISA) Katiba Institute and Centre for Enhancing Democracy and Good Governance, Civil Society Organizations, celebrate Supreme Court declaration that states:**

***The Constituency Development Fund Act, 2013 is unconstitutional.***

The CSO partners had moved to the Supreme Court arguing that CDF is unconstitutional as MPs are involved in implementing taxpayer funded projects, which is a preserve of the executive arm of government.

The genesis of this matter can be traced to the introduction of the Constituencies Development Fund (CDF Fund) in 2003 through the now-repealed Constituencies Development Fund Act, 2003 (CDF Act, 2003) which provided that the government was to set aside at least 2.5% of its ordinary revenue and channel it to the CDF Fund to be utilized at the constituency level.

In 2007, the CDF Act 2003, was amended to establish the National CDF Board at the constituency level to replace the National Committee. CDF Committees were also established with respective Members of Parliament being the Constituency Committee patrons.

On 14th January 2013, the CDF Act 2013 was enacted and in doing so, repealed the CDF Act 2007. Aggrieved by the enactment of the CDF Act of 2013, **The Institute for Social Accountability and Centre for Enhancing Democracy and Good Governance**, challenged the constitutionality of the **CDF Act 2013**.

**At the High Court**, it was held that, **A declaration that the CDF Act 2013 was unconstitutional** and therefore invalid, the order of invalidity above was suspended for a period of twelve (12) months from the date of judgment.

The national government could remedy this defect within the period of suspension and the CDF Act 2013 upon the expiry of the twelve (12) months the Act would be repealed. **The National Assembly**, dissatisfied with this decision decided to appeal at the **Court of Appeal** and their appeal was allowed and determined.

**The Institute for Social Accountability, Centre for Enhancing Democracy and Good Governance and Katiba Institute** proceeded to the Supreme Court to challenge the Court of Appeal's decision.

The Supreme Court having fully considered all the issues delineated by the court for determination found:

- a] The appeal before the Court of Appeal was not moot.*
- b] The CDF Act 2013, as amended by the CDF (Amendment) Act ,2013 is unconstitutional on account of procedural lapses for failing to involve the senate in its enactment.*
- c] The CDF Act 2013, does not offend the constitutional design*

*d] The CDF Act 2013, offends the division of functions between the national and county governments.*

*e] The CDF Act 2013, offends constitutional principles on the division of revenue.*

*f] The CDF 2013, offends constitutional principles on public finance.*

*g] The CDF Act 2013, offends the constitutional principle of separation of power.*

We would like to express our immense gratitude to our Partners, the legal team comprising of SC John Khaminwa, SC Wilfred Nderitu, Mr. Elisha Ongoya and Dudley Ochiel for their passion, dedication, and professionalism. Above all, our heart-felt gratitude goes to the Courts for fiercely upholding and safeguarding the Constitution and ensuring that justice prevails.

*As the next steps*, we welcome opportunities on your different platforms to expound more on the reasons behind the petition and how we envision the incoming government will engage in ensuring that development at the constituencies is met but within the tenets of the law.

For further details contact [rozalia.wangui@tisa.or.ke](mailto:rozalia.wangui@tisa.or.ke) or [lynette.etemesi@tisa.or.ke](mailto:lynette.etemesi@tisa.or.ke) and or call us on 0736104933.

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