

THE NATIONAL ASSEMBLY  
PAPERS LAID



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DATE: 23 MAR 2021

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REPUBLIC OF KENYA

THE NATIONAL TREASURY AND PLANNING

TABLED BY:

Telegraphic Address: 22921  
Finance-Nairobi

THE NATIONAL TREASURY  
P.O. Box 30007  
NAIROBI

CLERK OF THE TABLE

Fax No.: 310833  
Telephone: 2252299

When Replying Please Quote;

Ref. No. TNT/CONF 356/02 "D (29)

**Mr. Michael Sialai, CBS**  
Clerk of the National Assembly  
Parliament Buildings  
P.O. Box 41842 - 00100  
**NAIROBI**

Dear

*Sialai,*

*3 M/M/M  
Registers and CDC  
Please with CDC  
for processing.  
22/3  
To regional  
& accounts  
to receipt.  
22.3.21.  
19/03/21  
Cause taking  
committee*

12<sup>th</sup> March, 2021

**RE: THE PUBLIC FINANCE MANAGEMENT (NATIONAL DROUGHT EMERGENCY FUND) REGULATIONS, 2020**

The Public Finance Management (National Drought Emergency Fund) Regulations, 2021 have been published vide Legal Notice No. 27 (Kenya Gazette Supplement No. 21) of 5<sup>th</sup> March, 2021.

Towards this end, the National Treasury is submitting the following documents in accordance with the Statutory Instruments Act, 2013 to the National Assembly for further necessary action:-

- a. The published Public Finance Management (National Drought Emergency Fund) Regulations, 2021 Legal Notice No. 27 (Kenya Gazette Supplement No. 21) of 5th March, 2021; and
- b. A signed Explanatory Memorandum;

The purpose of this letter, therefore, is to submit the above mentioned documents to the National Assembly for approval.

Your prompt attention and action on this matter will be highly appreciated.

Yours

*Sincerely,*

**HON. (AMB.) UKUR YATANI**  
**CABINET SECRETARY/NATIONAL TREASURY & PLANNING**

NATIONAL ASSEMBLY  
**RECEIVED**  
17 MAR 2021  
DEPUTY CLERK  
J.W.N  
P.O. Box 41842 - 00100, NAIROBI

Encl.



**Copy to: Hon. Eugene Wamalwa, EGH**  
Cabinet Secretary  
Ministry of Devolution and ASALS,  
**NAIROBI**

**Julius Muia, PhD, CBS**  
Principal Secretary  
National Treasury  
**NAIROBI**

**Micah Powon, CBS**  
Principal Secretary  
State Department of ASALS  
Ministry of Devolution and ASALS  
**NAIROBI**

**Kennedy Ogetto, EBS**  
Solicitor General  
Office of the Attorney General  
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**James Oduor, EBS**  
Chief Executive Officer  
National Drought Management Authority  
**NAIROBI**

# EXPLANATORY MEMORANDUM TO THE PUBLIC FINANCE MANAGEMENT (NATIONAL DROUGHT EMERGENCY FUND) REGULATIONS, 2021

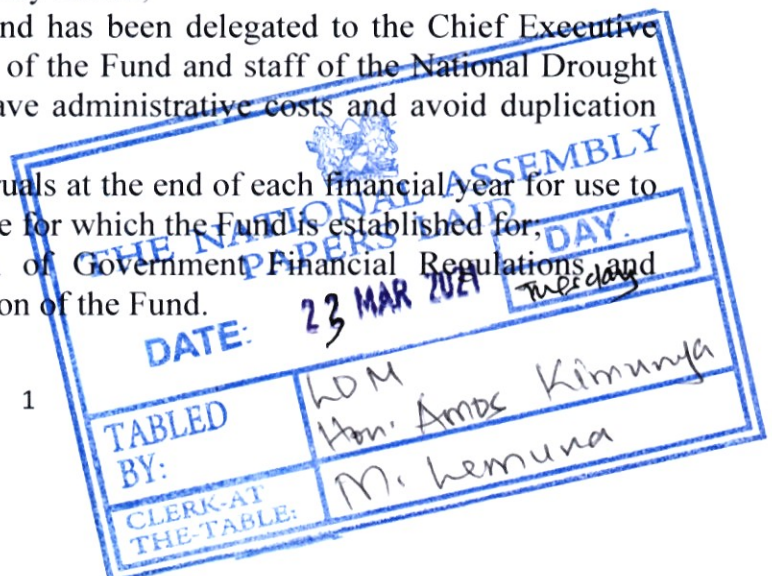
## 1. The Purpose of The Public Finance Management (National Drought Emergency Fund) Regulations, 2021

The objectives of the proposed National Drought Emergency Fund are to: -

- a. improve the effectiveness and efficiency of the drought risk management system in the country;
- b. facilitate resilience building, preparedness and timely response to drought during its different stages in order to reduce and minimise the negative effects of droughts;
- c. to receive financial resources from development partners who support government on drought risk management interventions;
- d. provide for—
  - i. a common basket emergency Fund in order to facilitate faster, transparent, predictable and accountable release of funds for drought risk management;
  - ii. funds for capacity and technical expertise development to improve on drought risk management systems; and
  - iii. the establishment, management and coordination of programmes, projects or activities to further the foregoing objects and purposes.

In this regard, the Public Finance Management (National Drought Emergency Fund) Regulations, 2021 seek to make provisions for:

- (i) the interpretation, objects and purpose of the Fund;
- (ii) the establishment of the Fund under Section 24 (4) of the Public Finance Management Act;
- (iii) provide for the sources of the Fund including the initial capital of the Fund appropriated by parliament of Kenya Shillings two billion;
- (iv) the oversight and supervision of the Fund to be done by the National Drought Management Authority Board;
- (v) the administration of the Fund has been delegated to the Chief Executive Officer as the Administrator of the Fund and staff of the National Drought Management Authority to save administrative costs and avoid duplication of functions;
- (vi) retention of receipts and accruals at the end of each financial year for use to further the object and purpose for which the Fund is established for;
- (vii) provide for the application of Government Financial Regulations and procedure in the administration of the Fund.



- (viii) provide for the establishment of coordination structures that provides for the representation of the two levels of Government, their composition and roles;
- (ix) the regulations have assigned the Cabinet Secretary responsible for matters relating to drought to be the policy Cabinet Secretary, where this Fund will be domiciled;
- (x) the regulations have assigned the Cabinet Secretary / National Treasury and Planning the responsibility to prescribe a framework for consultation with development partners;
- (xi) provide for the criteria for Project identification, submissions of project proposals, allocation of funds among various components of the drought risk management to facilitate posterity of the Fund and where necessary, co-financing by county governments and non-state actors;
- (xii) provide for oversight of Parliament through annual reporting to the Auditor General and quarterly reporting on projects financed by the Fund;
- (xiii) provide for the maintenance of proper records in the management and administration of the Fund including reporting requirements to comply with the provisions of the Public Finance Management Act, 2012; and
- (xiv) provides for the administrative costs of running the Fund at a maximum of five per centum (5%),
- (xv) offences and penalty of misappropriation of the Fund as provided for under Section 199 of the Public Finance Management Act; and
- (xvi) provides for the procedure for winding-up of the fund.

## **2. The Legislative Context**

The National Assembly delegated the duty to establish national public funds to the Cabinet Secretary responsible for finance with the approval of the National Assembly. This is provided for under Section 24 (4) of the Public Finance Management Act, 2012.

Article 43 (1) of the Constitution provides that, every Kenyan has a right to be free from hunger and have adequate food of acceptable quality, to clean and safe water in adequate quantities, to education and highest attainable standards of health which includes the right to health care services and reasonable standards of sanitation. Additionally, Paragraph 24 of Part I and paragraph 12 of Part 2 of the Fourth Schedule of the Constitution has assigned disaster management to both levels of Government and therefore it is a concurrent function.

Therefore, the National Treasury has complied with the provisions of the Statutory Instruments Act, 2013 on the requirement for public consultations while preparing these Regulations.

### **3. Policy Background**

The Constitution assigned the duty of disaster management to both levels of Government and therefore it is a concurrent function under Paragraph 24 of Part I and paragraph 12 of Part 2 of the Fourth Schedule of the Constitution.

Over the past eight years, Kenya's GDP growth rate has been rising. Growth has been broad based, which has contributed to lowering poverty levels and helped move Kenya towards the attainment of the Sustainable Development Goals. To date, more than ever before, more resources are being channeled to lower levels of government through the County Governments, the National Government Constituency Development Fund, the National Government Affirmative Action Fund among others. Overall, Kenyans acknowledge the significant positive change in the country but much remains to be done to reduce poverty on a sustained basis. One of the key interventions to ensure the significant positive change is not lost is to put in place sustainable climate change adaptation and drought risk reduction measures.

The National Drought Management Act, 2016 established the National Drought Management Authority to exercise coordination over all matters relating to drought management including implementation of policies and programmes. In order to complement the activities of the National Drought Management Authority and mobilize resources from development partners towards drought preparedness, response and recovery management in Kenya, it is imperative to establish a Fund to receive these resources and assure the highest level of accountability to the Kenyans as well as our development partners.

In the past four decades, droughts have become more frequent, more widespread, and more intense. For example, in the last 100 years, the country has experienced more than 28 major droughts and the most recent droughts experienced in Kenya were in 1983/1984, 1991/1992, 1996/1997, 1999-2001, 2005/06, 2009-11 and 2016 /2017. The Government responded to the 2016/2017 drought through reallocation and re-assignment of expenditures worth Kshs. 12.6 billion to various sectors to address this drought challenge. In addition, Kenya has been experiencing severe droughts that have been declared a national disaster.

It is estimated that drought in Kenya directly affects the household food security of more than 10 million people, mainly in arid and semi-arid areas. However intense droughts have also affected non-drought prone counties or areas. For example, the 1999-2001 drought affected most parts of the country, including some high rainfall areas and at its peak, 4.5 million people depended entirely on relief food.

Climate change is likely to make drought impacts more intense and less predictable. The country's key economic sectors, such as water, agriculture and livestock as well as



tourism, are all vulnerable to the impacts of climate change. Drought emergencies have had a negative impact on Kenya's economic performance. The 2008-11 drought period reduced GDP by an average of 2.8% per annum, and caused damages and losses totaling Kshs. 969 billion.

Emergency response also diverts expenditure from development programmes and priorities, which impacts negatively on the implementation of medium term plan and vision 2030 programmes and projects. For example, during the drought period of 2016 - 2017, an annual average of 4.6 million people received emergency food and non-food relief, at an average cost of Kshs. 12.8 billion per year. This excludes other drought response interventions which were being done concurrently in other sectors such as water, health, agriculture and livestock among others.

In order to meet the Jubilee policy of ensuring no Kenyan shall suffer extreme hunger in line with the provisions of the Constitution; such a Fund comes at the most opportune time given its diverse components that touch on most vulnerable groups.

#### **4. Public Consultations**

Extensive consultations were done while preparing the Public Finance Management (National Drought Emergency Fund) Regulations, 2021 with key stakeholders and their input taken into account before finalization of these Regulations. Some of the key stakeholders consulted are the County Governments, line ministries and development partners among others (*See Appendix Attached*). The National Treasury & Planning, the Ministry of Devolution and ASALS, the Office of the Attorney General and Department of Justice and the National Drought Management Authority held pre-publication scrutiny with Parliament.

#### **5. Regulatory Impact Assessment**

The National Drought Emergency Fund was established under Section 16 of the National Drought Management Authority Act, 2016 by Parliament, which has now been deleted to pave way for its establishment under the Public Finance Management Act, 2012. Towards this end, the establishment of this Fund under the Public Finance Management Act, 2012 was to align the Fund to existing Government policy, which is the Public Finance Management Act, 2012. Accordingly, therefore an impact assessment was not necessary given that Parliament had already established the National Drought Emergency Fund under Section 16 of the National Drought Management Act, 2016, which has been amended.

#### **6. Guidance**

The National Drought Management Authority in consultation with the National Treasury & Planning, the Ministry of Devolution and ASALS will sensitize stakeholders including

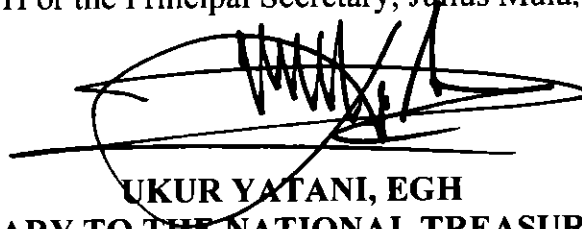
Parliament, and the general public, on the provisions of the Public Finance Management (National Drought Emergency Fund) Regulations, 2021.

**7. Performance Monitoring and Evaluation of the Fund**

The National Treasury & Planning, Ministry of Devolution and ASALS and National Drought Management Authority shall monitor the application of the National Drought Emergency Fund resources. This will be done through quarterly reports submitted by the Administrator of the Fund. In addition, National Drought Management Authority Board shall be responsible for implementing the Fund and will also carry out regular monitoring and evaluation of the specific programmes, projects and develop policies relating to the general administration and management of the Fund.

**8. National Treasury Contact Person.**

The contact person at the National Treasury & Planning is the Cabinet Secretary, Hon. (Amb) Ukur Yatani, EGH or the Principal Secretary, Julius Muia, PhD, CBS.



UKUR YATANI, EGH

**CABINET SECRETARY TO THE NATIONAL TREASURY AND PLANNING**

Date.....12th March, 2024.....

(Legislative Supplement No. 13)

LEGAL NOTICE NO. 27

THE PUBLIC FINANCE MANAGEMENT ACT, 2012

(No. 18 of 2012)

THE PUBLIC FINANCE MANAGEMENT (NATIONAL DROUGHT EMERGENCY  
FUND) REGULATIONS, 2021.

ARRANGEMENT OF REGULATIONS

*Regulation*

PART I—PRELIMINARY

1—Citation.

2—Interpretation.

PART II— ESTABLISHMENT AND ADMINISTRATION OF THE FUND

3—Establishment of the Fund.

4—Capital of the Fund.

5—Sources of the Fund.

6—Object and purpose of the Fund.

7—Expenditure of the Fund.

8—Oversight role of the Board.

9—Functions of the Board.

10—Administrator of the Fund.

11—Designation of administrator of the Fund.

12—Vacancy in the office of the administrator of the Fund.

13—Removal of the administrator of the Fund.

14—Secretariat of the Fund.

15—Functions of the secretariat.

16—Coordination mechanism.

17—Establishment of the National Steering Committee.

18—Establishment of the Intergovernmental Technical  
Committee.

19—Establishment of the County Drought Committee.

20—Resource mobilization.

21—Standard setting and norms.



**PART III—PROJECTS**

- 22—Intervention areas
- 23—Emergencies not handled by the Fund
- 24—Drought recovery
- 25—Criteria for accessing drought resilience and preparedness component funds
- 26—Project planning
- 27—Projects designed by the Fund, county governments or national government entities
- 28—Projects financed jointly with faith based organization or community based organization
- 29—Joint infrastructure projects by counties
- 30—Drought response
- 31—Rules to access drought response
- 32—Submission of project proposals

**PART IV—FINANCIAL PROVISIONS**

- 33—Allocation of resources among drought risk management components
- 34—Procedures of disbursement and accountability
- 35—Quarterly reports on projects and disbursements
- 36—Fund bank accounts
- 37—Record of disbursements to be kept
- 38—Financial reporting
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**PART V—MISCELLANEOUS PROVISIONS**

- 40—Application of Government Financial Regulations and procedures
- 41—Costs of running the Fund
- 42—Offence and penalty
- 43—Guidelines on the Fund
- 44—Winding-up of the Fund

## THE PUBLIC FINANCE MANAGEMENT ACT, 2012

*(No. 18 of 2012)*

IN EXERCISE of the powers conferred by section 24 (4) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury makes the following Regulations—

## THE PUBLIC FINANCE MANAGEMENT (NATIONAL DROUGHT EMERGENCY FUND) REGULATIONS, 2021

## PART I—PRELIMINARY

1. These Regulations may be cited as the Public Finance Management (National Drought Emergency Fund) Regulations, 2021.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“Act” means the Public Finance Management Act, 2012;

No. 18 of 2012.

“accounting officer” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

“Board” means the Board of the National Drought Management Authority constituted under section 8 of the National Drought Management Authority Act, 2016;

No. 4 of 2016.

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to finance;

“County Drought Committee” means the County Committee on Drought and Food Security constituted under regulation 19;

“disaster” means disruption of the functioning of a community or society causing widespread human, material, economic or environmental losses which exceed the ability of the affected community or society to cope using its own resources;

“drought” means a predictable and slow-onset disruption of the functioning of a community or society caused by periods of lower-than-normal precipitation;

“drought contingency plan” means a management process that analysis emerging drought risks and establishes arrangements in advance to enable timely, effective and appropriate preparedness and responses;

“financial year” means the period of twelve months ending on the thirtieth day of June in each year;

“financing agreement” means any document signed by the Government of Kenya and any development partner or such other person, which provides for grant or other financing to the Fund;

“Fund” means the National Drought Emergency Fund established under regulation 3;

“Inter-governmental Technical Committee” means the Intergovernmental Technical Committee on Drought and Food Security established under regulation 18;

“National Steering Committee” means the National Drought and Food Security Steering Committee established under regulation 17,

“officer administering the Fund” means an officer designated as the administrator of the fund under regulation 10,

“Secretary” means the Secretary of the National Drought Management Authority appointed under section 12 of the National Drought Management Authority Act, 2016

No 4 of 2016

#### PART II— ESTABLISHMENT AND ADMINISTRATION OF THE FUND

3 There is established a Fund to be known as the National Drought Emergency Fund which shall be administered by the officer designated under regulation 10

Establishment of the Fund

4 (1) The initial capital of the Fund shall be two billion shillings appropriated by Parliament

Capital of the Fund

(2) The Fund shall be financed through the annual appropriations by the National Assembly which appropriations may include contributions from the private sector, donor support and global climate change and disaster risk financing facilities

(3) All receipts, savings and accruals to the Fund and the balances thereof at the end of each financial year shall be retained by the Fund

5 The sources of the Fund shall consist of—

Sources of the Fund

- (a) such monies as may be appropriated by the National Assembly,
- (b) grants and donations,
- (c) global climate change and disaster risk financing facilities,
- (d) income generated from the proceeds of the Fund, and
- (e) any monies accruing to or received by the Fund from any other lawful source

6 The object and purpose for which the Fund is established is to—

Object and purpose of the Fund

- (a) improve the effectiveness and efficiency of the drought risk management system in the country,
- (b) facilitate resilience building, preparedness and timely response to drought during its different stages in order to reduce and minimise the negative effects of droughts,
- (c) to receive financial resources from development partners who support government on drought risk management interventions,
- (d) provide for—
  - (i) a common basket emergency fund in order to facilitate faster, transparent, predictable and accountable release of Funds for drought risk management,



- (ii) funds for capacity and technical expertise development to improve on drought risk management systems; and
- (iii) the establishment, management and coordination of programmes, projects or activities to further the foregoing objects and purposes.

7. (1) There shall be paid out of the Fund payments in respect of any expenses incurred pursuant to the object and purpose for which the Fund is established.

Expenditure of the Fund.

(2) The expenditure on the Fund shall be on the basis of and limited to annual work programmes, contingency plans and cost estimates which shall be prepared by the administrator of the Fund and approved by the Board before the beginning of the financial year to which they relate.

(3) Any revision of the approved annual work programme, contingency plans and of any cost estimates shall be referred to the Board for approval.

(4) The expenditure of this Fund shall be based on projects and programmes approved by the Board.

(5) The Fund shall not be used for the purpose of supporting political parties or entities.

8. The Board of the National Drought Management Authority established under section 18 (1) of the National Drought Management Authority Act, 2016 shall oversee the administration and management of the Fund.

Oversight role of the Board.

No. 4 of 2016.

9. (1) The functions of the Board relating to the oversight role and administration of the Fund shall be to —

Functions of the Board.

- (a) formulate policies to achieve the objects and purpose of the Fund;
- (b) provide oversight on the administration and management of the Fund;
- (c) approve estimates of revenue and expenditure of the Fund for each financial year;
- (d) receive, review and approve statutory and management reports of the Fund before submission to third parties;
- (e) approve the opening of any bank account of the Fund;
- (f) oversee timely and efficient disbursement of funds from the Fund to finance approved projects and programmes or interventions by the Fund; and
- (g) perform such other duties as may be considered necessary by the Cabinet Secretary responsible for matters relating to drought from time to time, for the proper administration and management of the Fund and such a duty shall be assigned in writing.

(2) The Board shall conduct its business and affairs in the manner provided under section 11 of the National Drought Management Authority Act, 2016

No 4 of 2016

10 (1) The Secretary of the National Drought Management Authority Board shall be the administrator of the Fund

Administrator of the Fund

(2) Despite paragraph (1), in the absence of the Secretary, the Cabinet Secretary may designate a person who has satisfied the criteria set out under regulation 11 and upon recommendation by the Cabinet Secretary responsible for matters relating to drought in consultation with the Board as the administrator of the Fund and shall be a member of the Board

(3) The administrator of the Fund shall—

- (a) open and operate a bank account at the Central Bank of Kenya or a bank to be approved by the Board and the National Treasury.
- (b) supervise and control the administration of the Fund,
- (c) consult with the Board and the Cabinet Secretary responsible for matters relating to drought on matters relating to the administration of the Fund,
- (d) cause to be kept proper books of accounts and other books and records of all activities and undertakings financed from the Fund,
- (e) prepare, sign and submit to the Board in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund for approval,
- (f) transmit to the Auditor-General the statement of accounts under paragraph (e), with a copy to the National Treasury and such a statement shall be prepared in the manner prescribed by the Public Sector Accounting Standards Board and audited in accordance with the Public Audit Act, 2015,
- (g) furnish additional information which is proper and sufficient for the purpose of examination and audit by the Auditor General in accordance with the provisions of the Public Audit Act, 2015, and
- (h) prepare a quarterly report on the receipts into and issues out of the Fund and submit it to the Cabinet Secretary for gazettelement by the 21<sup>st</sup> of every fourth month

No 34 of 2015

(4) Every statement of account shall include details of the balance between the assets and liabilities of the Fund, and shall indicate the financial status of the Fund as at the end of the financial year concerned

11 (1) Where the Cabinet Secretary designates a person as the administrator of the Fund under regulation 10 (2), that person shall be designated as provided under this regulation

Designation of administrator of the Fund

(2) A person shall be designated as the administrator of the Fund under this regulation if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least ten years' post-qualification experience;
- (c) has at least five years' experience in the relevant field; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(3) A person designated as the administrator of the Fund under this regulation, shall serve for a term of three years, renewable once.

(4) Where the Cabinet Secretary does not intend to designate the administrator of the Fund after the first term, the Cabinet Secretary shall notify the administrator of the Fund of such a decision at least three months before the expiry of the incumbent's term.

(5) The administrator of the Fund shall only be subject to the directions of the Board and shall be responsible for the day to day administration of the affairs of the Fund including the staff of the secretariat of the Fund.

12. The office of the administrator of the Fund shall become vacant if the holder—

- (a) dies;
- (b) by notice in writing addressed to the Board resigns from office;
- (c) is convicted of an offence and sentenced to imprisonment for a term of more than six months without the option of a fine;
- (d) is absent from three consecutive meetings of the Board without good cause; or
- (e) is removed in accordance with the provisions of the Constitution.

Vacancy in the office of the administrator of the Fund.

13. (1) The administrator of the Fund may be removed from office by the Board only on grounds of—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct;
- (c) bankruptcy; or
- (d) incompetence.

Removal of the administrator of the Fund.

(2) Prior to removal under paragraph (1), the administrator of the Fund shall be—

- (a) informed, in writing, of the reasons for the intended removal; and
- (b) given an opportunity to put in a defence against any such allegations either in person or through an advocate.



14 (1) The secretariat of the National Drought Management Authority established under section 13 (1) of the National Drought Management Authority Act, 2016 shall be the secretariat of the Fund

Secretariat of the Fund

No 4 of 2016

(2) Subject to paragraph (1), the Board may designate the staff of the National Drought Management Authority to be the secretariat of the Fund or recruit staff of the Fund as are necessary for the proper discharge of the functions of the Fund

(3) Where, the Board recruits staff under paragraph (2), the Board shall ensure that in the appointment of the staff—

- (a) is done competitively subject to the provisions of Article 234 (5) of the Constitution,
- (b) not more than two-thirds of the staff shall be of the same gender,
- (c) the regional and other diversity of the people of Kenya is taken into account, and
- (d) persons with disabilities are afforded adequate and equal opportunities

(4) For the avoidance of doubt, the Secretariat of the Fund shall also comprise of the administrator of the Fund

15 (1) The secretariat shall—

Functions of the secretariat

- (a) be responsible for the day to day administration and management of the Fund,
- (b) develop a transparent and accountable financial internal control systems for the Fund,
- (c) prepare and submit for approval by the Board estimates of revenue and expenditure, annual work programmes and costs estimates, annual procurement plans and annual cash flow plans,
- (d) implement projects, programmes and coordinate with other national government ministries, county governments and non-state actors at the national and county level in the realization of the objectives and purpose of the Fund,
- (e) prepare statutory and management reports and submit them to the Board for approval,
- (f) monitor and provide reports to the Board, on a quarterly basis or as need arises, on efficiency and effectiveness of drought risk management supported by the Fund,
- (g) implement the decisions of the Board,
- (h) undertake any other duty as the Board may assign through a resolution

(2) In addition to the functions assigned under paragraph (1), the secretariat shall—

- (a) receive investment and contingency plans for review and recommendation to the Board for approval;
- (b) receive and review drought early warning information for early action;
- (c) propose to the Board the triggers for the funds flow to the various drought stages to be financed from the Fund;
- (d) propose to the Board the triggers for response plans for the activation of the response plans;
- (e) oversee projects and programmes implemented through financing of the Fund;
- (f) with the approval of the Board, establish prudent public financial management systems for the administration of the Fund;
- (g) coordinate monitoring and evaluation of projects financed from the Fund;
- (h) prepare regular communication messages regarding drought risk management with regard to the Fund; and
- (i) maintain proper records of the Fund.

16. The coordination mechanism for the Fund shall be through—

Coordination mechanism.

- (a) the National Drought and Food Security Steering Committee established under regulation 17;
- (b) the Inter-Governmental Technical Committee on Drought and Food Security established under regulation 18; and
- (c) the County Committee on Drought and Food Security established under regulation 19;
- (d) development partner engagement forums as may be determined by the Cabinet Secretary from time to time.

17. (1) There is established the National Drought and Food Security Steering Committee comprised of—

Establishment of the National Steering Committee.

- (a) the Deputy President who shall be the chairperson;
- (b) the cabinet secretaries responsible for—
  - (i) drought risk management;
  - (ii) devolution;
  - (iii) planning;
  - (iv) finance;
  - (v) water;
  - (vi) health;
  - (vii) education;

- (viii) defence
- (ix) national government coordination,
- (x) agriculture, livestock and fisheries,
- (xi) social protection,
- (xii) environment,
- (xiii) energy,
- (xiv) wildlife, and
- (xv) meteorology

(c) the chairperson, Council of Governors

(2) The Chairperson, Council of Governors shall be the Vice-Chair of the National Steering Committee

(3) The Cabinet Secretary responsible for matters relating to drought risk management shall be the Secretary of the Steering Committee

(4) The functions of the National Steering Committee shall be to—

- (a) provide policy recommendations on drought response interventions,
- (b) provide leadership and oversight on drought and food security interventions during the alarm and emergency stages,
- (c) receive, consider and make decisions based on reports from the Inter-governmental Technical Committee, and
- (d) mobilize resources for drought response interventions during alarm and emergency stages

(5) The National Drought and Food Security Steering Committee shall report to the Cabinet

(6) The quorum at the meeting of the National Steering Committee shall be one-third of the members of the Committee, and decisions at a meeting of the Committee shall be by consensus

(6) The Secretariat of the Fund shall keep proper records of the meetings of the National Steering Committee

(7) The decisions of the National Steering Committee shall be communicated to the members of the Committee and relevant government agencies within fourteen days after the meeting

18 (1) There is established the Inter-Governmental Technical Committee on Drought and Food Security comprised of—

- (a) the principal secretaries responsible for—
  - (i) drought risk management,

Establishment of the  
Intergovernmental  
Technical  
Committee



- (ii) devolution;
  - (iii) planning;
  - (iv) finance;
  - (v) water;
  - (vi) health;
  - (vii) education;
  - (viii) defence
  - (ix) national government coordination;
  - (x) agriculture and livestock;
  - (xi) social protection;
  - (xii) environment;
  - (xiii) energy;
  - (xiv) wildlife; and
  - (xv) meteorology
- (b) five nominees of the Council of Governors, who shall be county executive committee members responsible for matters relating to drought, water, health, agriculture and finance.

(2) In making the nominations under paragraph (1) (b), the Council of Governors shall consider representation from drought prone areas.

(3) The Inter-governmental Technical Committee shall be chaired by the Principal Secretary for matters relating to drought risk management.

(4) The quorum at the meeting of the Intergovernmental Technical Committee shall be one-third of the members of the Committee, and decisions at a meeting of the Committee shall be by consensus.

(5) The administrator of the Fund shall be the Secretary of the Inter-governmental Technical Committee.

(6) The functions of the Inter-governmental Technical Committee shall be to—

- (a) prepare the agenda of the National Steering Committee;
- (b) receive, consider and make appropriate recommendations to the national steering committee on the optimal drought response interventions;
- (c) receive, consider and identify resources available in various ministries, state departments and agencies and county governments for drought interventions and make appropriate recommendations;

- (d) oversee the implementation of the decisions of the National Steering Committee,
- (e) receive, consider and make appropriate recommendations on intervention measures being undertaken by various government agencies, development partners, faith based organizations and other non-governmental organizations, and
- (f) mobilize resources towards the fulfilment of the objective of the Fund

(7) The secretariat of the Fund shall keep proper records of the meetings of the Intergovernmental Technical Committee

(8) The decisions of the Intergovernmental Technical Committee shall be communicated to the members of the Committee and relevant government agencies within fourteen days after the meeting

19 (1) There is established the County Committee on Drought and Food Security comprised of—

Establishment of the  
County Drought  
Committee

- (a) the officer responsible for coordination of national government functions at the county level,
- (b) the national government officer responsible for drought risk management at the county level,
- (c) the national government officer responsible for education at the county level,
- (d) the national government officer responsible for social protection at the county level,
- (e) the county executive committee member responsible for drought risk management,
- (f) the county executive committee member responsible for planning,
- (g) the county executive committee member responsible for water,
- (h) the county executive committee member responsible for finance,
- (i) the county executive committee member responsible for health,
- (j) the county executive committee member responsible for agriculture, livestock and fisheries,
- (k) the county executive committee member responsible for early childhood education,
- (l) the county executive committee member responsible for social protection,
- (m) two representatives nominated by the caucus of faith based organizations involved in matters related to drought and food security at the county level,

- (n) two representatives of non-governmental organizations and community based organizations working on matters related to drought and food security in the respective county; and
- (o) two persons nominated by the Board to represent the marginalised areas who shall have knowledge on drought and food security in the respective county and shall be residents of that county.

(2) The officers specified under paragraphs (1) (b) to (l) may in writing nominate a representative to attend and participate in the meetings of the County Drought Committee on their behalf.

(3) The County Drought Committee shall be co-chaired by the Governor and the County Commissioner.

(4) The Secretariat of the Fund shall be the Secretariat to the County Drought Committee.

- (5) The functions of the County Drought Committee shall be to—
- (a) consider drought and food security early warning information and make recommendation to the Board;
  - (b) coordinate drought risk management plans and ensure their integration into the national and county planning and budgeting processes;
  - (c) consider and recommend to the Board for approval projects to be financed by the Fund under the investments in resilience building and drought preparedness;
  - (d) consider and recommend to the Board, for approval, drought response plans and appropriate interventions;
  - (e) ensure projects recommended for funding under paragraph (c) and (d) are not duplicated;
  - (f) coordinate and communicate drought interventions measures and share drought risk management information with the public;
  - (g) provide recommendations to the Board to inform policy formulation and strategy of the Fund;
  - (h) oversee the monitoring and evaluation of projects and programmes funded under the Fund;
  - (i) oversee drought and food security interventions;
  - (j) coordinate actors on drought risk management at the county level;
  - (k) implement decisions of the National Steering Committee and the Inter-governmental Technical Committee;
  - (l) consider and make recommendations on the level of government that should intervene on drought and food security matters;



(m) co-ordinate resource mobilization at the county level

(6) The quorum at the meeting of the County Drought Committee shall be one-third of the members of the Committee, and decisions at a meeting of the Committee shall be by consensus

(7) The County Drought Committee may co-opt upto a maximum of three experts in order to facilitate the Committee in making an informed decision

(8) A person appointed under paragraph (1)(m), (n) and (o) shall cease to be a member of the County Drought Committee—

- (a) if the person resigns from office,
- (b) dies,
- (c) is absent from three consecutive meetings of the Committee without permission from the chairperson,
- (d) is convicted of an offence and sentenced to imprisonment for a term of more than six months without the option of a fine,
- (e) is removed from office by the vote of at least two thirds of the members of the Committee on any one or more of the following grounds—
  - (i) lack of integrity,
  - (ii) gross misconduct,
  - (iii) embezzlement of public funds,
  - (iv) physical or mental infirmity

(9) Whenever a vacancy occurs in the County Drought Committee by reason of resignation, incapacitation or death of a member appointed pursuant to paragraph (1)(m) (n) and (o), then the vacancy shall be filled from the same category of persons where the vacancy has occurred

(10) Members of the County Drought Committee shall be appointed by notice in the *Gazette* by the Cabinet Secretary responsible for matters relating to drought risk management

(11) A member of the County Drought Committee appointed under paragraph 1(m) (n) and (o), other than *ex-officio* member, shall hold office for a term of three years renewable once

(12) The Secretariat of the Fund shall keep proper records of the meetings of the County Drought Committee.

(13) The decisions of the County Drought Committee shall be communicated to the members of the Committee and relevant government agencies within fourteen days after the meeting

(14) The secretariat shall prepare and submit reports on the activities of the County Drought Committee to the Board with a copy to the county executive committee responsible for matters relating to drought risk management

(15) The Secretariat of the Fund shall keep proper records of the meetings of the County Drought Committee, which records shall be

shared within fourteen days after confirmation with the county committee members with a copy to the Board.

20. (1) The Committees established under regulations 17,18 and 19 and the Board shall mobilize resources through—

Resource mobilization.

- (a) engagement with the communities, development partners and private sector;
- (b) engagement with the global disaster risk and climate change funds or entities that finance drought risk management programmes;
- (c) development of bankable proposals for drought early warning, preparedness and resilience.

(2) Any engagement with the development partners, private sector or global funds shall be done within the framework specified by the Cabinet Secretary and shall be in line with the Kenya external resources mobilization policy.

21. (1) The National Government shall be responsible for policy formulation, setting norms and standards for drought risk management through public participation.

Standard setting and norms.

(2) The secretariat of the Fund shall consolidate various policies, norms and standards and disseminate them to national government agencies, counties and development partners to facilitate their implementation.

(3) County governments shall prepare their drought risk management plans and reports based on national policies, norms and standards set by the National Government including Guidelines which may be issued from time to time.

(4) The national norms and standards shall set sector specific quantifiable indicators for the outputs for each strategic objective, which shall form the basis of reporting on drought and food security for both national and county governments.

### PART III—PROJECTS

22. The Fund may finance interventions in the following areas to complement existing government programmes, in accordance with the Guidelines under these Regulations —

Intervention areas.

- (a) water and sanitation;
- (b) agriculture, livestock and fisheries;
- (c) education;
- (d) health, sanitation and nutrition;
- (e) cash transfers scale ups;
- (f) conflict management and resolution; and
- (g) drought coordination.

- 23 The Fund shall not finance hazards which may include floods, epidemics, wild fires, terrorism and armed conflict. Emergencies not handled by the Fund
- 24 (1) The Secretariat of the Fund may, from time to time, request the Board to approve drought recovery interventions Drought recovery
- (2) Where the Board has approved drought recovery interventions to be undertaken by the Secretariat, the Secretariat shall prepare and submit monthly progress reports to the Board
- 25 (1) The criteria for prioritising access to drought resilience and preparedness component funds shall be as follows — Criteria for accessing drought resilience and preparedness component funds
- (a) the projects shall be either aligned to national development priorities or be included in the county integrated development plan,
  - (b) projects contributing significantly to sustainable development to enhance resilience of communities against drought and climate change risks,
  - (c) evidence of community participation in drought risk reduction project identification,
  - (d) projects sustainability framework after completion,
  - (e) satisfy all statutory requirements relating to design and implementation of such projects,
  - (f) proof that a county government shall contribute a per centum agreed under regulation 27 on co-financed projects,
  - (g) proof that a faith based organization, non-governmental organization or community based organization shall contribute a per centum agreed under regulation 28 on co-financed projects, and
  - (h) is supported by a recommendation of the County Drought Committee or the Secretariat of the Fund
- (2) The Secretariat shall submit to the Board for approval the scores of the projects evaluated against the criteria set out under paragraph (1)
- 26 (1) The secretariat of the Fund shall — Project planning
- (a) coordinate the development of community drought risk reduction plans,
  - (b) receive, review and prioritise project proposals from the communities which are aligned to national development goals or county integrated development plan,
  - (c) initiate project proposals to address drought and food insecurity and submit the proposals to the Board for approval,
  - (d) prepare and submit prioritised projects to the County Drought Committees for review and make recommendations to the Board,

- (e) monitor implementation of approved projects and submit quarterly reports to the County Drought Committee and the Board.
- (f) evaluate and document approved completed projects and submit reports to the County Drought Committee and the Board.

(2) Any project proposals to be implemented by the Fund shall be approved by the Board prior to implementation.

(3) The project proposals under this regulation shall relate to resilience and preparedness stages of drought risk management.

27. (1) A project relating to a devolved function may be designed by the secretariat of the Fund or a county government or a national government agency.

Projects designed by the Fund, county governments or national government entities.

(2) The project designed under paragraph (1) shall be submitted to the Board, a county government or a national government agency for consideration and financing.

(3) Where the secretariat of the Fund has designed a project relating to a devolved function, the secretariat may engage a county government for co-financing.

(4) Where a project has been designed under paragraph (3), the county government shall contribute a per centum to be agreed between the county government and the Board in form of a matching grant, from time to time.

(5) Where a county government has accepted to co-finance a project under paragraph (4) that county government shall signify in writing to the administrator of the Fund not later than 31<sup>st</sup> January of each year.

(6) Where projects are financed under this regulation, the Secretariat of the Fund shall use that project to build the capacity of that county on drought risk management.

(7) The secretariat of the Fund shall enter into an inter-governmental agreement pursuant to Article 187 of the Constitution and the Intergovernmental Relations Act, 2012 with the respective county government for any project financed under this Regulation.

28. (1) The secretariat of the Fund in collaboration with a county government may design a project relating to a devolved function and submit it to a faith based organization or non-governmental organization or community based organization for consideration and co-financing.

Projects financed jointly with faith based organization or non-governmental organization or community based organization.

(2) Where a project is co-financed by a faith based organization or non-governmental organization or community based organization, such an institution shall contribute a per centum to be agreed between the organization and the Board.

(3) The Secretariat of the Fund shall enter into an inter-governmental agreement pursuant to Article 187 of the Constitution and the Intergovernmental Relations Act, 2012 with the respective county government for any project financed under this Regulation.

No. 2 of 2012.

(4) The Secretariat of the Fund shall carry out joint monitoring and evaluation with a faith based organization or non-governmental organization or community based organization, as agreed between the parties in the memorandum of understanding for any project financed under this regulation

29 (1) Pursuant to section 146 of the Public Finance Management Act, 2012, the Secretariat of the Fund may in collaboration with the respective county governments, prepare a project design relating to a devolved function as a joint infrastructure project to be financed by more than one county or a joint infrastructure project between one county and the Fund

Joint infrastructure projects by counties

No 18 of 2012

(2) Any projects designed under paragraph (1) shall be submitted to the Board for approval and after approval it shall be submitted to the respective county executive committee member responsible for matters relating to drought risk management for co-financing, with a copy to the County Governor

(3) The Secretariat of the Fund shall coordinate meetings among the counties undertaking the joint infrastructure project

(4) The Board shall enter into an inter-governmental agreement pursuant to Article 187 of the Constitution and the Intergovernmental Relations Act, 2012 with the respective county governments for any project financed under this Regulation

No 2 of 2012

30 (1) The Secretariat of the Fund shall prepare a rapid assessment report for the affected county during alert stage or alarm stage as informed by drought early warning information for—

Drought response

- (a) determining the resource requirements for alert, alarm or emergency stages of the drought,
- (b) proposing the agencies to be involved in responding to the drought and food security interventions to be financed by the Fund,
- (c) recommending the funds flow mechanism to the Board for approval which may include flow of funds to county governments or various agencies and the accountability framework by each agency to the Fund, or
- (d) liaising with the county governments or other agencies approved by the Board to undertake various response interventions in a timely manner

(2) The Secretariat of the Fund shall receive sectoral reports from the relevant national government agencies to facilitate preparation of the drought and food security reports

(3) The Secretariat of the Fund shall prepare and submit drought and food security report to the Inter-governmental Technical Committee—

- (a) on a monthly basis and before the tenth day of the succeeding month during the alert stage, and



- (b) every fourteen days during the alarm and emergency stages, on receipt of the early warning information of the drought and food security.

(4) Where drought and food security response interventions require financial resources beyond the capital of this Fund, the Board shall submit a proposal to the National Steering Committee on the financing gap and a request to mobilise more resources to respond to drought and food insecurity.

31. To access drought response funds the Board shall consider the —

Rules to access drought response funds.

- (a) alert stage of drought cycle as per the Authority's drought phase classifications guided by vegetation condition index and other social economic indicators;
- (b) request received from County Drought Committees or the Secretariat of the Fund on drought response plans;
- (c) evidence of drought rapid assessment by the affected sectors based on early warning trigger indicators;
- (d) response plan based on drought rapid assessment reports and other drought risk secondary data;
- (e) recommendation by the county or national coordination structure;
- (f) procurement plans based on drought and food security response intervention measures; and
- (g) cash flow plans supporting the procurements plans on drought and food security response intervention measures.

32. (1) A community may at any time submit project proposals through the county government, national government agency, community based organization or faith based organization, to the Secretariat of the Fund.

Submission of project proposals.

(2) Project proposals received by the Secretariat of the Fund by thirtieth November of each year shall be reviewed and appropriate recommendations made by the County Drought Committee to the Board for financing from the Fund.

(3) Any project approved for financing by the Board, which has a co-financing arrangement shall be communicated to the relevant county government or agency co-financing that project by the thirtieth day of January each year for incorporation in their respective budgets.

(4) Any project submitted for approval under this regulation shall be identified through a drought risk management participatory process.

(5) The Secretariat of the Fund shall publish and publicise the list of approved projects by the Board for each financial year.

## PART IV—FINANCIAL PROVISIONS

33 (1) The resources of the Fund shall be allocated to the various drought risk management components as follows—

Allocation of resources among drought risk management components

- (a) resilience and preparedness shall be allocated up to fifty per centum (50%) of the total budget of the Fund in each financial year,
- (b) response interventions shall be allocated up to forty per centum (40%) of the total budget of the Fund in each financial year, and
- (c) recovery interventions shall be allocated up to five per centum (5%) of the total budget to be funded every financial year

(2) Where no recovery interventions are required under paragraph (1) (c), the amount of money thereof may be allocated to either resilience and preparedness or response interventions

(3) Notwithstanding paragraphs (1) and (2), at least twenty five per cent (25%) of the total Government of Kenya funds allocated to response are earmarked for cash transfers through the National Safety Net Programme

(4) Despite paragraph (1), the National Steering Committee may increase the proportion of the Fund allocated to drought response

(5) Despite paragraphs (1), (2), (3) and (4), a grant or donation to the Fund may be earmarked for the purpose agreed between the government and the development partner in line with the objectives of the Fund

34 (1) The Board shall, from time to time, formulate guidelines for disbursements of funds

Procedures of disbursement and accountability

(2) Where the Board intends to use the county governments or faith based organizations, non-governmental organizations or community based organizations, it shall ensure that the guidelines for disbursement of funds to the county government or institution have clear roles and responsibilities for reporting and accounting of the resources disbursed to the county governments or the institution

35 (1) The Board shall, on a quarterly basis, submit a report to the Cabinet Secretary responsible for matters relating to drought affairs with a copy to the National Treasury and the National Steering Committee, detailing—

Quarterly reports on projects and disbursements

- (a) a summary of the project proposals approved by the Board in the preceding quarter as recommended by the County Drought Committee or the Secretariat of the Fund and indicating the funding status of such projects, if any,
- (b) a summary of the status of disbursements from the Fund to the respective county governments or any agency involved in implementation of any projects financed from the Fund,

- (c) a summary of the status of disbursements of funds to the various projects and implementation progress;
- (d) a summary of outputs and outcomes of each project, where applicable; and
- (e) any restriction imposed on a county government or any agency involved in the implementation of the projects of the Fund.

(2) The Board shall prepare and submit quarterly monitoring and evaluation reports to the Cabinet Secretary responsible for matters relating to drought affairs in line with the guidelines issued by the Board from time to time.

36. (1) All bank accounts of the Fund shall be opened in accordance with the provisions of section 28 of the Public Finance Management Act, 2012 and the Regulations thereof.

Fund bank accounts.

(2) Any bank account of the Fund shall be opened upon approval of the Board and the National Treasury and shall be in the name of the Fund and the name of the county to which it relates.

(3) The main Fund bank account shall be opened and maintained at the Central Bank of Kenya.

(4) The signatories to the main Fund account under paragraph (3) shall be the administrator of the Fund and at least two other persons authorized by the Board from amongst the staff of the Secretariat of the Fund.

(5) The signing instructions shall be such that the signature of the administrator of the Fund shall be mandatory on all payment cheques or electronic instructions intended for actual release of money from the main Fund account, plus any one of the other two Fund account signatories.

(6) The signatories of any other bank accounts shall be at least two, one of whom shall be mandatory and all the signatories shall be approved by the Board.

(7) The signing instructions of any other bank account of the Fund under paragraph (6) shall be such that the signature of the technical officer designated by the administrator of the Fund, shall be mandatory on all payment cheques or electronic instructions intended for actual release of money from that account, plus any one of the other bank account signatories of that account designated as such.

(8) Every payment or instruction for payment out of the respective bank account shall be fully supported in line with the provisions of the Public Finance Management Act, 2012 and the Regulations thereof.

No. 18 of 2012.

37. (1) An accurate record of all disbursements from the Fund Account for financing approved projects shall be kept and updated every month by the Secretariat of the Fund.

Record of disbursements to be kept.

(2) The administrator of the Fund shall submit to the Board, quarterly and annual reports on all projects approved and financed from the Fund

38 (1) The Board shall prepare financial and non-financial reports in accordance with the provisions of the Public Finance Management Act, 2012 and as may be prescribed from time to time by the Public Sector Accounting Standards Board

Financial reporting

(2) The Board shall prepare an annual general performance report of the Fund to be submitted together with the report under paragraph (1)

(3) The annual financial and non-financial statements prepared under paragraph (1) shall be submitted to the Auditor-General for audit in accordance with the Public Audit Act, 2015

No 34 of 2015

39 (1) The Board shall prepare a management report on a monthly basis, which report shall contain details on—

Management reports

- (a) the severity of the drought prevailing in the country and by county,
- (b) the status report on drought interventions measures undertaken during the preceding month and the cumulative drought period,
- (c) status report on county drought and food security intervention measures undertaken during the preceding month and the cumulative drought period,
- (d) the resources required for drought risk management under each of the following stages—
  - (i) resilience and preparedness stage, if any,
  - (ii) response stage, or
  - (iii) recovery stage

(2) The report prepared under paragraph (1) shall be submitted to the Cabinet Secretary for matters relating to drought risk management with a copy to the National Steering Committee and the Chairperson Council of Governors, with clear recommendations from the Board by the tenth day of the succeeding month.

(3) A county government experiencing drought and food insecurity shall by the fifth day of each month submit a report to the secretariat of the Fund for review and the making of recommendations by the County Drought Committee.

(4) The report under paragraph (3) shall contain the following details—

- (a) the county drought response plan;
- (b) interventions made by the county to mitigate against drought impacts,
- (c) interventions made in partnership with a county government against drought impacts by development partners,



- (d) resources available by the county government and development partners partnering with the county government to finance the response plan; and
- (e) financing gap per sector, if any.

#### PART V—MISCELLANEOUS PROVISIONS

40. Subject to the provisions of the Public Finance Management Act, 2012, any existing relevant legislation and existing Government Financial Regulations and Procedures shall apply in the administration of the Fund.

Application of Government Financial Regulations and Procedures. No. 18 of 2012.

41. (1) The administration costs for running the Fund shall not be more than three per centum (3%) of the total budgetary provision for the Fund.

Costs of running the Fund.

(2) Despite the provisions under paragraph (1), each year, three (3%) per centum of the annual budget of the Fund shall be set aside for the Fund Secretariat, of which not more than two (2%) per centum shall be allocated to all County Secretariat's and Committees expenditure in accordance with the set criterion by the Board.

42. (1) Any person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided for in the Act and these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

Offence and penalty.

(2) In addition to the penalty prescribed under paragraph (1) and subject to the existing relevant laws, the Court may order for the recovery of the monies or assets acquired as a result of the commission of the offence thereof.

43. The Board shall through participatory process and in consultation with the Cabinet Secretary, develop guidelines for the proper management of the Fund.

Guidelines on the Fund.

44. (1) In the event of winding up of the Fund, the net cash balances shall be transferred to the National Exchequer Account while other assets of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to drought.

Winding-up of the Fund.

(2) The term of the Fund shall be for an initial period of ten (10) years, beyond which the approval of the Cabinet and Parliament shall be sought.

Made on the 16th February, 2021.

UKUR YATANI,  
*Cabinet Secretary for the National Treasury  
and Planning.*



(LN. 17 OF 2021)