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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON:
THE CONSIDERATION OF THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023
(SENATE BILLS NO. 14 OF 2023)

 THE NATIONAL ASSEMBLY PAPERS LAID	
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TABLED BY:	HON. KURIA KIMANI, MP (CHAIRPERSON)
CLERK-AT THE-TABLE:	VIVIAN WAMBUI

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LIST OF ABBREVIATIONS AND ACRONYMS

CECM	-	County Executive Committee Member
COB	-	Controller of Budget
COG	-	Council of Governors
COK	-	Constitution of Kenya
CRA	-	Commission on Revenue Allocation
EF	-	Equalisation Fund
ICPAK	-	Institute of Certified Accountants of Kenya
LSK	-	Law Society of Kenya
MP	-	Member of Parliament
NGEC	-	National Gender and Equality Commission
PFMA	-	Public Finance Management Act

ANNEXURES

Annexure 1: Adoption Schedule

Annexure 2: Minutes

Annexure 3: The Equalisation Fund (Administration) Bill, 2023 (Senate Bills No. 14 of 2023)

Annexure 5: Advertisement inviting the public to submit memoranda on the Bill

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Annexure 7: Letter from the Clerk of the National Assembly inviting relevant stakeholders to attend the public participation forum

Annexure 8: Memoranda by stakeholders

CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on the consideration of the Equalisation Fund (Administration) Bill (Senate Bills No. 14 of 2023). The Bill was published in the Kenya Gazette Supplement No. 44 of 12th April, 2023 and passed by the Senate with amendments on 12th October, 2023. The Bill was committed to the Committee for consideration and tabling of the report to the House pursuant to Standing Order 127.

The principal object of the Bill is to provide for the administrative structures for the management of the Equalisation Fund as established under Article 204 of the Constitution. It establishes the Equalisation Fund Advisory Board. Additionally, the Bill seeks to outline the structure and responsibilities of bodies or officials tasked with administering the Fund. The Bill will help provide basic services including water, roads, health facilities and electricity to the marginalized areas to the extent necessary to bring the quality of those services to the level generally enjoyed by the rest of the nation.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the print media on 8th March 2024, inviting the public to submit memoranda by way of written statements on the Bill.

In addition, the Clerk of the National Assembly vide letter Ref. No.NA/DDC/F&NP/2024/041 dated 8th April 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on 16th April, 2024. The memoranda were to be received on or before 15th April, 2024 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received seven memoranda.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to the provisions of Standing Order 199(6), it is my singular honour to present to this House the Report of the Committee on its consideration of the Equalisation Fund (Administration) Bill, 2024 (Senate Bills No. 14 of 2023). The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill.

Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made invaluable contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Equalisation Fund (Administration) Bill, 2023 (Senate Bills No. 14 of 2023) and wish to report to

this August House with the recommendation that the House approves the Bill with amendments.

Hon. CPA. Kuria Kimani, M.P.

Chairperson, Departmental Committee on Finance and National Planning

CHAPTER ONE

1 PREFACE

1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

1. The Departmental Committee on Finance and National Planning is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
 - a) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - b) *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - c) *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - d) *To study and review all legislation referred to it;*
 - e) *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - f) *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - g) *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - h) *To examine treaties, agreements and conventions;*
 - i) *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
 - j) *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - k) *To examine any questions raised by Members on a matter within its mandate.*
2. The Second Schedule to the National Assembly Standing Orders assigns the Committee the mandate to consider matters in relation to public finance, public audit policies, monetary policies, financial institutions, economy, investment policies, competition, banking, insurance, national statistics, population, revenue policies including taxation, national planning and development, digital finance, including digital currency.
3. In executing its mandate, the Committee oversees the following Ministries/Departments:

- a) The National Treasury and Planning.
- b) State Department for Economic Planning.
- c) The Commission on Revenue Allocation (CRA)
- d) Office of the Controller of Budget

1.2 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was constituted by the House on 27th October, 2022 and comprises the following Members:

Chairperson

Hon. CPA Kuria Kimani, MP
Molo Constituency

UDA Party

Vice-Chairperson

Hon. (Amb.) CPA Langat Benjamin Kipkirui, CBS, MP
Ainamoi Constituency

UDA Party

Members

Hon. (Dr.) Keynan, W, Adan, CBS, MP
Eldas Constituency

Jubilee Party

Hon. CPA Oyula, Joseph H. Maero, MP
Butula Constituency

ODM Party

Hon. Mboni, David Mwalika, MP
Kitui Rural Constituency

WDM Party

Hon. Okuome Adipo Andrew, MP
Karachuonyo Constituency

ODM Party

Hon. Kipkoros, Joseph Makilap, MP
Baringo North Constituency

UDA Party

Hon. CPA Rutto Julius Kipletting, MP
Kesses Constituency

UDA Party

Hon. Biego Paul Kibichiy, MP
Chesumei Constituency

UDA Party

Hon. Sunkuyia, R. George, MP
Kajiado West Constituency

UDA Party

Hon. Joseph K. Munyoro, MP
Kigumo Constituency

UDA Party

Hon. Sheikh Umul , MP
Mandera County

UDM Party

Hon. (Dr.) Shadrack Mwiti, MP
South Imenti Constituency

Jubilee Party

Hon. (Dr.) Ariko John Namoit,
MP

Turkana South Constituency

ODM Party

Hon. Machele M. Soud, MP
Mvita Constituency

ODM Party

1.3 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff:

Mr. Benjamin Magut
Principal Clerk Assistant II /Head of Secretariat

Ms. Jennifer Ndeto
Deputy Director Legal Services

Mr. Benson Kamande
Clerk Assistant III

Mr. Salem Lorot
Legal Counsel I

Ms. Winfred Kambua
Clerk Assistant III

Mr. George Ndenjeshe
Fiscal Analyst III

Mr. James Macharia
Media Relations Officer

Mr. Andrew Jumanne Shangarai
Principal Serjeant-At-Arms

Ms. Joyce Wachera
Hansard Reporter III

Mr. Benson Muthuri
Assistant Serjeant-At-Arms

Ms. Nelly W. Ondieki
Research Officer III

Mr. Mwangi Muchiri
Audio Officer

CHAPTER TWO

2 OVERVIEW OF THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023 (SENATE BILLS NO. 14 OF 2023)

2.1 Background

6. The Equalisation Fund (Administration) Bill, 2023, Senate Bills No. 14 of 2023, is a Senate Bill that was published in the Kenya Gazette Supplement No. 44 of 12th April, 2023 and passed by the Senate, with amendments, on 12th October, 2023. The Bill was then committed to the Committee for consideration and tabling of the report to the House pursuant to Standing Order 127.

2.2 Summary of Legal Provisions

7. The principal object of the Bill is to provide administrative structures for the management of the Equalisation Fund as established under Article 204 of the Constitution. It establishes the Equalisation Fund Advisory Board and outlines the structure and responsibilities of bodies or officials tasked with administering the Fund. The Bill will help provide basic services including water, roads, health facilities and electricity to the marginalized areas to the extent necessary to bring the quality of those services to the level generally enjoyed by the rest of the nation.
8. **PART I (Clauses 1-3)** of the Bill contains preliminary provisions.
9. **PART II (Clauses 4 and 5)** provides for the sources and objects of the Equalisation Fund.
10. **PART III (Clauses 6-15)** of the Bill provides for the establishment of the Equalisation Fund Advisory Board whose functions include advising and making recommendations to the Cabinet Secretary on the distribution of resources for the provision of the basic services to the marginalized areas under Article 204 of the Constitution in line with the recommendations of the Commission on Revenue Allocation; appraise and evaluate projects proposed under the workplans submitted to the Advisory Board to ensure compliance with the Constitution and the recommendations issued by the Commission on Revenue Allocation.
11. **PART IV (Clauses 16-30)** of the Bill provides for establishment of county technical committees, sub-county technical committee and Project Identification and Implementation Committee.
12. **PART V (Clauses 31 and 32)** of the Bill provides for the winding up of the Fund.
13. **PART VI (Clauses 33-38)** of the Bill provides for repeals, savings and transitions.
14. The salient provisions of the Bill are as follows:
 - i. Clause 3 of the Bill provides for the purpose of the Act as to—
 - (a) provide a framework for administration and management of the Equalization Fund in accordance with Article 204 of the Constitution;

- (b) provide for completion of ongoing projects under the policies developed by the Commission on Revenue Allocation under Article 216(4) of the Constitution;
 - (c) provide a framework for the identification, selection and implementation of projects for purposes of the Fund; and
 - (d) suspend the application of Article 204(7) of the Constitution and extend the pendency of the Fund; and
 - (e) provide for the procedures in relation to winding up of the Fund.
- ii. Clause 4 of the Bill provides that the Fund shall, pursuant to Article 204(1) of the Constitution, consist of one half of all revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.
 - iii. Clause 5 of the Bill provides that the object of the Fund is to provide basic services including water, roads, health facilities and electricity to the marginalized areas to the extent necessary to bring the quality of those services to the level generally enjoyed by the rest of the nation, so far as possible in an equitable, efficient and transparent manner.
 - iv. Clause 6 of the Bill provides for the establishment of the Equalisation Fund Advisory Board which shall consist of—
 - (i) the Chairperson who shall be appointed by the Cabinet Secretary;
 - (ii) the Principal Secretary responsible for matters relating to finance;
 - (iii) the Principal Secretary responsible for matters relating to devolution or a representative designated in writing;
 - (iv) one person from a pastoralist community nominated by the National Assembly;
 - (v) one person nominated by the Senate;
 - (vi) two persons nominated by the Council of Governors drawn from areas identified as marginalized by the Commission on Revenue Allocation;
 - (vii) the Chairperson of the Commission on Revenue Allocation or a representative designated in writing;
 - (viii) one person representing persons with disabilities appointed by the Cabinet Secretary;
 - (ix) the Chief Executive Officer who shall be secretary of the Board.
 - v. Clause 9 of the Bill provides for the functions of the Advisory Board which shall —
 - (a) advise and make recommendations to the Cabinet Secretary on the distribution of resources for the provision of basic services to the marginalized areas under Article 204 of the Constitution in line with the recommendations of the Commission on Revenue Allocation;
 - (b) appraise and evaluate projects proposed under the workplans submitted to the Advisory Board under section 15 to ensure

- compliance with the Constitution and the recommendations issued by the Commission on Revenue Allocation;
- (c) make recommendations on the priority areas requiring financing and implementation in accordance with the workplans considered under section (b) and in line with the recommendations of the Commission on Revenue Allocation;
 - (d) oversee, in consultation with the County Governments, the implementation of the projects to ensure compliance with the Constitution;
 - (e) monitor and evaluate the projects implemented by County Governments to determine their impact in addressing the factors contributing to the marginalisation of the areas identified in the counties;
 - (f) put in place measures for transparency and accountability in the implementation of projects by County Governments;
 - (g) establish a framework for collaboration between the National Government and County Governments in the implementation of projects in line with the Constitution, the recommendations of the Commission on Revenue Allocation and the Act;
 - (h) review the consolidated quarterly reports prepared by the officer administering the Fund on the implementation of the projects and make recommendations to the Cabinet Secretary on performance improvement;
 - (i) review the annual estimates of expenditure of the Fund for approval by the Cabinet Secretary;
 - (j) undertake project public participation in line with Article 201 of the Constitution; and
 - (k) carry out such other functions that may be necessary for the achievement of the objects and purposes of the Act or that may be conferred by any other law.
- vi. Clause 12 of the Bill provides that the expenses of the Board shall be paid out of the Fund which shall be on the basis of and limited to annual work programmes and budget estimates prepared by the Administrator of the Fund. It also provides that the administrative costs and expenses of the Advisory Board shall not exceed three percent of the approved annual allocation to the Fund.
- vii. Clause 13 of the Bill provides for the Chief Executive Officer of the Board who shall be the administrator to the Fund and shall be competitively recruited by the Board. The Chief Executive Officer shall serve for a term of three years and shall be eligible for re-appointment for a final term of three years. The provision also stipulates the qualifications of a person to be appointed as a Chief Executive Officer and the roles of the officer administering the Fund.

- viii. Clause 16 of the Bill provides for the projects and programmes for financing under the Fund. The basic services to be funded in marginalized areas by the Commission on Revenue Allocation shall be;
 - (a) water and sanitation;
 - (b) roads;
 - (c) health and facilities;
 - (d) electricity;
 - (e) such other basic services as shall be identified by the Commission on Revenue Allocation as requiring implementation in a marginalized area.
- ix. Clause 17 of the Bill provides for the establishment by the Board of a county technical committees in every eligible county comprising:
 - (a) the County Commissioner and the Governor who shall be co-chairpersons;
 - (b) the relevant county executive committee member for Finance;
 - (c) Constituency Development Fund Managers;
 - (d) a representative of the relevant County Assembly; and
 - (e) a public officer employed in the respective county government with technical expertise in areas that the prioritized projects fall.
- x. Clause 18 of the Bill provides that the County Technical Committee shall be responsible for approving all projects to be financed from the Fund.
- xi. Clause 24 of the Bill provides that the County Executive Committee Member responsible of matters relating to finance shall submit workplans through the respective county technical committee to the Board for approval.
- xii. Clause 27 of the Bill provides that the Board shall on a quarterly basis, submit a report to the Cabinet Secretary, the Commission and the Controller of Budget detailing—
 - (a) a summary of the project and programmes approved for financing in the preceding year indicating the funding status of such projects, if any;
 - (b) a summary of the status of disbursements of funds to the various projects and implementation progress;
 - (c) 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; and
 - (d) any restriction imposed on a county government, or any agency involved in the implementation of the projects or programmes by the county government.
- xiii. Clause 29 of the Bill provides that the administrator of the Fund shall open a designated Equalization Fund account at the Central Bank of Kenya. It provides, among others, that where a withdrawal from the Fund is authorized under an Act of Parliament that approves the appropriation of

- money, the officer administering the Fund shall make a requisition for the withdrawal and submit it to the Controller of Budget for authorization.
- xiv. Clause 30 of the Bill provides that the accounts of the Fund shall be audited and reported in accordance with the Public Finance Management Act and the Public Audit Act.
 - xv. Part V (clauses 31-32) of the Bill provides for winding up of the Fund. Particularly, clause 32 seeks to extend the expiry period of the Equalisation Fund to a further non-renewable term of 10 years from the date upon which the Fund would have lapsed under Article 204(6) of the Constitution
 - xvi. Part VI (clauses 33-38) of the Bill provides for repeals, savings and transition. Particularly, clause 34 of the Bill seeks to repeal the Public Finance Management (Equalization Fund Administration) Regulations, 2021.
 - xvii. The Schedule of the Bill provides for the provisions relating to meetings of the Advisory Board.

CHAPTER THREE

3. PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 LEGAL FRAMEWORK ON PUBLIC PARTICIPATION

15. Article 118 (1)(b) of the Constitution provides that:

"Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees."

16. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

*"(3) The Departmental Committee to which a Bill is committed shall **facilitate public participation on the Bill** through an appropriate mechanism including-*

- (a) inviting submission of memoranda;*
- (b) holding public hearings;*
- (c) consulting relevant stakeholders in a sector; and*
- (d) consulting experts on technical subjects.*

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House."

3.2 MEMORANDA RECEIVED ON THE BILL

17. Pursuant to the aforementioned provisions of law, the Clerk of the National Assembly placed an advertisement in the print media on 8th March 2024 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Clerk of the National Assembly vide letter Ref. No. NA/DDC/F&NP/2024/041 dated 8th April, 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on 16th April 2024 respectively.

18. The Committee received seven memoranda from the Controller of Budget (COB), Law Society of Kenya (LSK), Council of Governors (COG), Equalization Fund Board (National Treasury), Institute of Certified Accountants of Kenya (ICPAK), National Gender and Equality Commission (NGEC) and Commission on Revenue Allocation (CRA). The memoranda are annexed to this report as Annexure 8. They stated as follows:

Clause 2

19. **CRA** proposed to define "the commission" as the Commission on Revenue Allocation for clarity purposes.

Committee Observation

The Committee agreed with the stakeholder. Since the word “Commission” has been referred to in the Bill in clauses 23, 25, 27, defining the term will provide clarity.

20. **The EF Board** recommended establishment of an Incorporated Fund Board as opposed to an Advisory Board that is unincorporated Fund Board.

Committee Observation

The Committee was of the view that the Board is time-bound under Article 204(6) of the Constitution hence there was no need for the Board to be a State Corporation. Even though clause 32 of the Bill proposes the extension of the period for a further ten years, the time-bound nature of the Fund cannot be wished away. Therefore, the Committee recommended the retention of the provision in the Bill.

21. **The EF Board** recommended the addition of a new objective to provide for the definition of “implementing agency” to mean either a National or County government entity implementing projects on behalf of the Fund.

Committee Observation

The Committee noted that clause 9(1) (g) of the Bill provides for one of the functions of the Advisory Board, which shall be to establish a framework for collaboration between the National Government and County Governments in the implementation of projects in line with the Constitution, the recommendations of the Commission on Revenue Allocation and the Act. The Committee observed that the provisions of the Bill were adequate, and therefore, it felt that providing for additional objectives or defining the term “implementing agency” would amount to over-legislation.

Clause 3

Clause 3(b)

22. **The EF Board** proposed amending the clause to “provide for completion of ongoing projects under the First, Second Policies and subsequent policies.”

Committee Observation

The Committee noted that clause 36 of the Bill provides that any ongoing projects under the repealed Regulations shall be finalized in accordance with the provisions of the Act. Further, clause 3(b) provides for the purpose of the Act as to “provide for completion of projects under policies developed by the Commission on Revenue Allocation under Article 216(4) of the Constitution”. The provision was elegant, adequate and it addresses the fears of the stakeholder.

23. Additionally, it proposed to provide for a new objective “provide for direct and indirect implementation of the Fund” since Article 204(3) of the Constitution provides that the national government may use the Equalisation Fund either **directly** or **indirectly** through conditional grants to counties in which marginalized communities exist.

Committee Observation

The Committee observed that paragraph (a) of clause 3 was crisp and adequate as it provides that the Act seeks to “provide a framework for administration and management of the Equalization Fund in accordance with Article 204 of the Constitution.

Clause 3(d)

24. **LSK** proposed amending the clause to specify the number of years for which the suspension is effective, as Article 204(7) of the Constitution grants Parliament the power to suspend Article 204(6) of the Constitution through legislation for a fixed period of time.

Committee Observation

The Committee agreed in principle with the stakeholder but noted that whereas clause 3(d) rightly states the objective generally, clause 32(2) specifies that the Fund shall remain in force for a further non-renewable term of ten years from the date upon which the Fund would have lapsed under Article 204(6) of the Constitution.

Clause 4

25. **CRA** proposed amending the clause to include one half **percent** instead of one half of all revenue to align it with Article 204(1) of the Constitution.
26. **ICPAK** proposed amending the clause to include one half **percent** instead of one half of all revenue to provide clarity.

Committee Observation

The Committee agreed to the proposals. The clause was erroneous as it referred to “one half of all revenue” instead of “one half percent of all revenue” as provided for in Article 204(1) of the Constitution.

Clause 6

27. **The EF Board** recommended the establishment of an incorporated Equalisation Fund Board.
28. **ICPAK** noted that the bill lacks representation from a professional body. To enhance financial oversight and promote adherence to high standards of governance and accountability they proposed amending it to read as follows;

(1) There is established a Board to be known as the Equalization Fund Advisory Board which shall consist of—

- (a) the Chairperson who shall be appointed by the Cabinet Secretary;
- (b) the Principal Secretary responsible for matters relating to finance;
- (c) the Principal Secretary responsible for matters relating to devolution or a representative designated in writing;
- (d) one person from a pastoralist community nominated by the National Assembly;
- (e) one person nominated by the Senate;
- (f) one person nominated by the Council of Governors drawn from areas identified as marginalized by the Commission on Revenue Allocation;
- (g) the Chairperson of the Commission on Revenue Allocation or a representative designated in writing;
- (h) the Controller of Budget or a representative designated in writing;
- (i) a member from the professional body regulating Accountants;
- (j) the Chief Executive Officer who shall be secretary of the Board.

Committee Observation

The Committee was of a different view that the Board is time-bound under Article 204(6) of the Constitution hence there was no need for the Board to be a State Corporation. Even though clause 32 of the Bill proposes the extension of the period for a further ten years, the time-bound nature of the Fund cannot be wished away. Therefore, the Committee recommended the retention of the provision in the Bill.

Clause 6 (1) (d)

- 29. The **COB** was of the view that the Clause is discriminatory and contrary to Article 27 of the Constitution of Kenya and proposed its deletion.
- 30. **NGEC** proposed to delete clause 6(1)(d) & (e) to read as follows (one woman and one youth" nominated by pastoralists organizations from the marginalized areas and appointed by the Cabinet Secretary. They noted that the nominations by Senate and National Assembly interferes with the principle of separation of powers.

Committee Observation

The Committee was of a different view that having one person from a pastoralist community nominated by the National Assembly was not discriminatory. Further, Article 27(6) provides as follows—

(6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

Clause 6(1)(f)

31. The **COG** was of the view that there is need for adequate representation of the devolved units given that implementation will take place in marginalized areas identified within counties. This will bolster the county governments' engagement in the administration of the Fund and its associated services. They proposed amending the clause to read as follows;

"three persons nominated by the Council of Governors drawn from an eligible county identified as a beneficiary of the fund by the Commission on Revenue Allocation."

Committee Observation

The Committee noted that the provision proposes two persons nominated by the Council of Governors. The Committee was of the view that this was adequate representation.

Clause 6(1)(g)

32. **The EF Board** noted that the CRA and COB are independent offices which do not play a role in the executive office besides the oversight role over the fund and could potentially raise conflict of interest in the board. They proposed deleting clause 6 (1)(g) and 6(1)(h) and replacing them with;

6. (1) There is established a Board to be known as the Equalisation Fund Board which shall consist of-

a) the Chairperson who shall be appointed by the President;

b) the Principal Secretary responsible for matters relating to finance or a representative designated in writing;

c) the Principal Secretary responsible for matters relating to devolution or a representative designated in writing;

d) One person from a pastoralist community nominated by the National Assembly

e) one person nominated by the Senate;

f) One person Nominated by the Council of Governors drawn from areas identified as marginalized by the CRA

g) Three people nominated from organizations working in equalization fund beneficiary counties and special interest groups appointed by the Cabinet Secretary

h) the Chief Executive Officer who shall be Secretary of the Board

Committee Observation

The Committee agreed with the stakeholder to delete paragraph (g) in clause 6(1) and replacing it with three persons nominated by organisations working in equalisation fund beneficiary counties and special interest groups of whom one should be a person representing persons with disabilities. As a consequent of this, the Committee recommended deletion of paragraph (h). However, the Committee retained the other proposed members in the clause.

Clause 6(1) (i)

33. **LSK** proposed amending the clause to specify the CEO who is being referred to. The framing of the clause is ambiguous since section 2 of the Bill does not define the term Chief Executive officer.

34. Additionally, it proposed to introduce clause 6(4) to read “*the composition of the board shall at all times comply with gender rule contemplated in Article 27(8) of the Constitution*” as gender equality is a guiding principle in the constitutional dispensation post-2010.

Committee Observation

The Committee noted that clause 6(1)(i) was not ambiguous since clause 13 clarifies that the Chief Executive Officer shall be the administrator of the Fund. The Committee agreed with the proposal on gender equality and recommended an insertion of a subclause to provide that the nomination and appointment of the members of the Board shall take into account the gender, regional and ethnic diversities of the people of Kenya, youth and persons with disabilities.

Clause 6(2)

35. **CRA** proposed the deletion of subclauses (1) (d), (e) and (f) and replacing them with (1) (a) (d), (e) (f) and (h) to include all persons appointed under these clauses to be gazetted.

Committee Observation

The Committee agreed with the proposal.

Clause 6(3)

36. **CRA** proposed the deletion of subclauses (1) (d), (e) and (f) and replacing them with (1) (a) (d), (e) (f) and (h) for the tenure of office to apply to all persons appointed under these sub-clauses.
37. **ICPAK** noted that the provision limits limitation representation from a professional body. They recommended a three-year term, with the possibility of renewal, to provide the board with sufficient time to effectively implement and realize its vision.

Committee Observation

The Committee agreed with the proposal.

Clause 7

38. **CRA** proposed the deletion of subclauses (1) (d), (e) and (f) and replacing them with (1) (a) (d), (e) (f) and (h) for the qualification for appointment to apply to all persons appointed under these sub-clauses.

Committee Observation

The Committee agreed with the proposal

Clause 8

39. **CRA** proposed the deletion of subclauses (1) (d), (e) and (f) and replacing them with (1) (a) (d), (e) (f) and (h) for the vacation of office to apply to all persons appointed under these sub-clauses.
40. **The EF Board** noted that individuals appointed under clause 6 (1)(a) and (d) shall hold office for a term of three years, renewable once. This is a common practice for good governance in the public sector, which is three years renewable once.
41. **ICPAK** noted that in subclause iii, seeking permission from the Board is somewhat ambiguous. To align with Mwongozo code of Governance, they proposed amending to read as follows;
(i)has been absent from three consecutive meetings of the board without permission of the Chairperson.

Committee Observation

The Committee agreed with proposals.

Clause 8

Clause 8 b (iii & iv)

42. The **COB** noted that clause 8 b (iii & iv) are related and proposed merging the two sub-clauses

Committee Observation

The Committee agreed with the proposal.

Clause 8

43. The **COB** proposed amending clause 8 by including sub-clause (d) on bankruptcy and (e) on does not meet the requirements of Chapter 6 of the Constitution. This will provide a precise mechanism for appointing the Board whilst ensuring transparency and accountability.
44. **NGEC** proposed deletion of clause 8(b) (v) in its entirety since the provisions are prejudicial and discriminatory to persons with various forms of disabilities.

Committee Observation

The Committee noted that clause 8(b)(ii) of the Bill already provides for bankruptcy whereas cumulatively, clause 8(b)(iii), (iv) and (vi) speak to not meeting the requirements of chapter 6 of the Constitution.

Clause 9 (1) (a) &(c)

45. **The EF Board** noted that provisions in Article 216(4) and 204(4) of the Constitution mandates the role of identifying and providing recommendations on the distribution of resources for provision of basic services to the marginalised areas to CRA. Therefore, the board recommended the deletion of these subclauses.
46. **ICPAK** proposed amending the clause to align the board mandate, hence using the revenue appropriation instead of revenue distribution. They proposed to read as follows;
- (a) Advise and make recommendations to the cabinet secretary on the appropriation of resources for the provision of basic services to the marginalized areas under Article 204 of the constitution in line with the recommendations of the Commission on Revenue Allocation*

Committee Observation

The Committee agreed with the stakeholder's submission.

Clause 9(e)

47. **The EF Board** proposed amending the clause to provide for both direct and indirect implementation of EF projects.

Committee Observation

The Committee noted that the Fund caters for both the indirect and direct projects.

Clause 12(4)

48. The **COB** was of the view that there shouldn't be an exemption for the 3% capping on the administrative expenses and proposed deletion of the clause in its entirety. In the absence of the Equalization Fund Act, the Public Finance Management Act (PFMA) applies.

49. **The EF Board** proposed amending the clause by adding a new sub clause 4 to include administrative expenses for the implementing agencies which should not be more than 2% of the annual allocation to the beneficiary county.

Committee Observation

The Committee noted that clause 12(4) was a transitional provision for seamless implementation of clause 12. Further, the Committee noted that the clause was adequate in its provision for administrative expenses which would also be utilized by the implementing agencies through the Board.

Clause 13 (2) (b)

50. The **COB** proposed to amend the clause by adding the phrase "... or any related field" to the education qualifications to expand the eligibility for appointment in other related academic disciplines.

51. **The EF Board** was of the view that the qualifications of the CEO are biased to the health sector leaving water, energy and infrastructure which are priority sectors provided in Article 204 of the CoK. They proposed the qualification of the CEO to be prescribed in the Human Resource Instrument.

52. **ICPAK** proposed amending this to be in line with Mwongozo guidelines and best practices observed in public entity bodies.

Committee Observation

The Committee noted that clause 13(2)(b) of the Bill provides for one of the qualification requirements as having at least ten years' experience at senior management level in financial management, business administration, economics or law. The stated fields are proposed because it requires someone with financial competence and experience. Expanding it to "any related field" may defeat this purpose. The qualifications as stated are not biased to the health sector as indicated by the stakeholder. The Committee was therefore of the opinion that the proposal in the Bill was adequate.

Clause 13(3)

53. **The EF Board** proposed amending the CEO's term to Five years and reappointment for a further and final term of five years. The technicality of Fund administration is that a CEO's term should be 5 years and eligible for a further 5 years for consistency, good governance, and stability of the Fund.

Committee Observation

The Committee noted that the Mwongozo Code of Governance for State Corporations provides for the tenure of a Board member which shall not exceed a cumulative term of six years or two terms of three years each. The Committee, therefore, was of a different view of retaining the proposal in the Bill.

Clause 13(4) (a)

54. The **COB** was of the view that Clause 13(4) (a) be amended by including "The Officer administering the Fund shall, *in consultation with the National Treasury*". This will provide for the role of the National Treasury in opening the bank account and will be in line with Section 18(2) of the Public Finance Management Act (PFMA).

Committee Observation

The Committee noted that the clause was adequate. Similarly, section 18 of the PFMA provides that the National Treasury shall administer the Equalisation Fund in accordance with Article 204. This should be read together with clause 29 of the Bill providing for withdrawals from the Fund which provisions are similar to those in section 18 of PFMA. Therefore, the Committee was of the view that section 18 of PFMA ought to be repealed to avoid conflict and overlap of the two provisions.

Clause 13(4) (b)

55. The **COB** proposed deletion of the phrase "*from time to time*" and replacing it with "*in accordance with this Act*". The Equalization Fund is an independent Fund not under the National Treasury's control. The role of the National government under Article 204 of the Constitution and Section 18 of the PFMA is limited to operational aspects of the establishment and maintenance of an account for the Equalization Fund.

Committee Observation

The Committee noted that the Bill designates the Chief Executive Officer of the Board as the administrator of the Fund. Similarly, section 18 of the PFMA provides that the National Treasury shall administer the Equalisation Fund in accordance with Article 204. This should be read together with clause 29 of the Bill providing for withdrawals from the Fund which provisions are similar to those in section 18 of PFMA. Therefore, the Committee was of the view that section 18 of PFMA ought to be repealed to avoid conflict and overlap of the two provisions. The Committee agreed with the stakeholder.

Clause 15(1)

56. The **EF Board** was of the view that the board should be incorporated with the mandate to appoint and constitute the secretariat through the fund while complying with the applicable public employment and Human Resource laws in Kenya. They proposed the clause to read as follows;

15. (1) *There shall be a secretariat consisting of -*

a) administrator of the Fund; and

b) such other public officers as the Fund shall, in consultation with the Board, designate for the proper performance of the functions of the secretariat under this Act.

Committee Observation

The Committee noted that there were inconsistencies in the use of “administrator to the Fund”, “Fund Administrator”, and “Officer administering the Fund” in the Bill. Whereas clause 2 of the Bill defines “Fund administrator”, this is not consistently applied. Therefore, the Committee agreed with the stakeholder to ensure consistency and proposes the use of “Fund administrator” consistently in the Bill. The Committee agreed with the stakeholder’s second proposal to amend clause 15(1) (b) of the Bill for the independence and efficient performance of the Board’s functions.

Clause 15(2) (d)

57. **CRA** noted there was an editorial issue and proposed deletion of “Guidelines” and replacing it with “Bill”

Committee Observation

The Committee agreed to the proposal.

Clause 15 (2) (f) (i)

58. **CRA** noted there was an editorial issue and proposed deletion of the phrase “have been.”

Committee Observation

The Committee agreed to the proposal.

Clause 16

59. **The EF Board** proposed amending the clause by reducing the number of committees to two committees at the county level with representation from the three committees.

Committee Observation

The Committee noted that the Bill proposes the establishment of a county technical committee, a sub-county technical committee, and a Project Identification and Implementation Committee. The Committee agreed to reduce the committees from three to two to provide for a county technical committee and a sub-county technical committee. The Committee recommended the removal of the Project Identification and Implementation Committee and its functions to be included in the functions of a sub-county technical committee.

Clause 16 (a)

60. **CRA** noted that there was need to align the clause with Article 204(2) of the Constitution and proposed the deletion of the word "sanitation."

Committee Observation

The Committee agreed to the proposal.

Clause 17 (a)

61. **CRA** proposed the deletion of "Governor" and replacing it with "County Administrator" since this is a technical Committee and the Governor should be represented by the County Administrator.

62. **ICPAK** proposed having representation from a professional body to enhance financial oversight and promote adherence to high standards of governance and accountability.

63. **NGEC** noted that the Committee does not comprise Non-state actors. They proposed the expansion of the Technical Committee to include non-state actors in the same order as proposed in the Advisory Board.

Committee Observation

The Committee noted that the County Governments Act, Cap. 265, does not provide for a County Administrator but the Office of the sub-county administrator by dint of section 50 of the Act. If the stakeholder meant a sub-county administrator, the Committee observed that the sub-county administrator is one of the co-chairpersons as provided for in clause 19 of the Bill. The Committee agreed with the stakeholders that since the County Technical Committee is a technical one, another person other than the Governor should be proposed. The Committee recommended the county secretary in place of the Governor.

Clause 17(d) and (f)

64. **LSK** proposed amending clauses 17 (d) and (f) to maintain one provision eliminating duplication of roles.

Committee Observation

The Committee noted that paragraph (f) the stakeholder referring to was non-existent. However, if the stakeholder meant to refer to paragraph (e), the Committee agreed to delete the paragraph since county governments have representatives through relevant county executive committee members for finance in the clause and the proposal to include a county secretary in place of the Governor. The Committee further noted that paragraph (e) needed to be amended to specify that the public officer will be one in charge of planning appointed by the Cabinet Secretary.

Clause 19

65. **The EF Board** observed that there is need to ensure efficient and effective implementation of the Fund and the two committees (County Technical Committee and the Sub-County technical Committee) should be responsible for project identification and oversight project implementation at the county level.

Committee Observation

The Committee agreed with the stakeholder.

Clause 20 (c)

66. **CRA** noted there was an editorial oversight and proposed deleting "access" and replacing it with "assess".

Committee Observation

The Committee agreed to the proposal to correct the topographical error.

Clauses 21 and 22

67. **The EF Board** proposed the deletion of the clauses as they create bureaucracy.

Committee Observation

The Committee agreed with the stakeholder.

Clauses 22(a) and 25(2) (b)

68. The **COG** noted that the clauses are duplicitous and could lead to wastage of public resources. Clause 9(1)(j) already assigns the responsibility of conducting public participation in the projects to the Board. They proposed amending the clauses to harmonize with clause 9(1)(j) of the bill.

69. **NGEC** proposed amending the clause to include the phrase "civic education" before the phrase "public" to ensure individuals or groups of the locals get the first opportunity to better their livelihoods through economic empowerment.

Committee Observation

The Committee noted that clause 9(1)(j) of the Bill provides that the Board shall "undertake project public participation in line with Article 201 of the Constitution". Clause 22 of the Bill provides that the Project Identification and Implementation Committee shall "undertake public participation in beneficiary counties". Clause 25(1)(c) of the Bill provides that the county executive committee member shall, upon the identification of projects and programmes, prepare a workplan setting out "a report on the public participation undertaken during the process of

identification of programmes and projects". The Bill provides that the workplan shall be submitted to the Board. The Committee, therefore, agreed with the stakeholder that the provisions were duplicitous to the extent that the Board performs the same function. Therefore, the Committee recommended that clause 9(1)(1)(j) be amended to provide that the Board shall oversight public participation.

Clause 23(1) (a)

70. The **COB** proposed amending clause 23(1) (a) to provide for under clause 15(1) (a) that the officer administering the Fund shall be the secretary to the Board. Further, they proposed under clause 2 defining that the "Commission" means the Commission on Revenue Allocation. This will provide clarity on who the Secretary to the Board is and the Commission referred to.

Committee Observation

The Committee agreed to the proposal.

Clause 24

71. **The EF Board** observed that to ensure efficiency, clause 24 provides that the CECM responsible for matters relating to finance shall submit plans through the respective county technical committees to the Board for approval; therefore, there is no need for approval by CS National Treasury after the board's approval. They proposed the clause to read as follows;

24(1) the CEC Member responsible for matters relating to finance shall submit workplans through the respective county technical committee to the Board for approval

24 (2) upon receipt and approval of the workplan, the Board shall make its recommendation to the Cabinet Secretary.

Committee Observation

The Committee noted that clause 26(2)(d) of the Bill provides that upon receipt of the workplan, the Board shall make its recommendations to the Cabinet Secretary. Although this caters to the stakeholder's proposal, the Committee was of the view that paragraph (d) should be deleted in line with the concerns of stakeholders under clause 26.

Clause 25

72. **CRA** observed that it is after the county executive Committee Member has prepared a work plan that it can be submitted hence the proposed amending the clause to come before clause 24.

Committee Observation

The Committee agreed to the proposal since it will be a logical flow of clauses 24 and 25 which provide for approval of workplans and preparation of workplans respectively.

Clause 25 (1)

73. CRA proposed deleting "under section 24" in the clause and replacing it with "section 22" to align it with the correct clause.

Committee Observation

The Committee agreed with the proposal since it corrects a cross-referencing error.

Clause 26

74. **The EF Board** proposed the deletion of the clause in its entirety.

Committee Observation

The Committee noted that the provision contains clear directions on the role of the Board after receipt of the workplan. Therefore, the Committee was of a different view of retaining the clause.

Clause 26(2) (d)

75. The **COB** proposed deletion of clause 26(2) (d) in its entirety. The Advisory Board and not the Cabinet Secretary should make decisions regarding the projects to be undertaken by the Equalization Fund.

Committee Observation

The Committee agreed to the proposal.

Clause 28(1) (a)

76. The **COB** noted there was a typing oversight and proposed amending the clause by adding "y" to the Advisor Board to be the Advisory Board.

77. **ICPAK** also noted the typing error on the word Advisory and proposed amending it.

Committee Observation

The Committee agreed to the proposal.

Clauses 28 & 29

78. The **COB** proposed amending the clauses by choosing either the officer administering the fund or the fund administrator. This will ensure clarity on the correct term of use.

79. **ICPAK** proposed amending the clause to align with Article 204(9) to ensure legal compliance and reinforce the authority of the actions taken. They proposed it to read as follows;

29. Where a withdrawal from the Fund is authorized under an Act of Parliament that approves the appropriation of money, the officer administering the Fund shall make a requisition for the withdrawal and submit it to the Controller of Budget for authorization, in accordance with Article 204(9) of the Constitution.

Committee Observation

The Committee agreed to the proposal.

Clause 29

80. The **COB** proposed amending clause 29 to provide for a two-tier withdrawal process as follows:

(a) Withdrawal from the Consolidated Fund to the Equalisation Fund whereby the National Treasury makes the requisition to the Controller of Budget.

(b) Withdrawal from the Equalisation Fund to the Counties Spending account whereby the Officer administering the Fund Shall Make the requisition to the Controller of Budget.

81. Further, the Controller of Budget shall develop guidelines for the withdrawal of funds from the Equalisation Fund.

82. According to Article 206 of the constitution, the Consolidated Fund is the First entry point of all the money raised or received on behalf of the national government. Article 228 of the Constitution requires the Controller of Budget to be satisfied that the withdrawal is in line with the law. These guidelines will assist the Controller of Budget in ensuring the office gets assurance and satisfaction that the withdrawal is authorised by law.

Committee Observation

The Committee agreed to the proposal.

Clause 29(2) & (3)

83. **COB** noted that the clauses contradict section 18(3) & (4) of the PFMA, which provides that the National Treasury shall make a requisition to withdraw funds from the Equalisation Fund. The amendments should be made to the PFMA.

Committee Observation

The Committee agreed to the proposal.

Clause 29(4)

84. The **COB** was of the view that to remove ambiguity, the spending agency account is not defined and the funds should be utilized in the counties hence proposed amending the clause by including "*respective counties spending agencies account*".

Committee Observation

The Committee was of a different view to retain clause 29(4) as there was no ambiguity.

New clause

85. The **COB** proposed the creation of a section on monitoring and evaluation and reporting to ensure proper accountability for the implementation of the programs.

Committee Observation

The Committee agreed to the proposal.

Clause 31

Clause 31 (1) (b)

86. **COB** was of the view that the National Treasury and not the Cabinet Secretary is responsible for ensuring that the Equalisation Fund is funded according to the Constitution. They proposed to replace the phrase "Cabinet Secretary" with "National Treasury".

87. Further, the **COB** proposed to replace "County governments" with "Equalisation Fund" in subparagraphs (i) and (ii). This is because the National Treasury's responsibility is to make requisition for the transfer of Funds into the Equalisation Fund and not transfer of funds to the county governments, since that is the purview of the fund administrator.

88. In subparagraph (ii), the National Treasury shall ensure that monies required for project completion are transferred to the "Equalization Fund", not the respective county governments.

Committee Observation

The Committee noted that the Cabinet Secretary referred to is the one for finance; therefore, it was proper. However, the Committee agreed with the stakeholders on the second proposal as the funds should be transferred to the Equalization Fund.

Clause 32(2)

89. The **COB** proposed the deletion of the clause because the law already provides mechanisms for enhancing the fund's life in Article 204(7) and (8) of the Constitution.

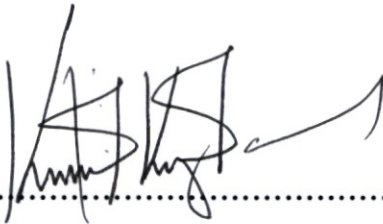
Committee Observation

The Committee noted that Article 204(7) provides that, "Parliament may enact legislation suspending the effect of clause (6) for a further fixed period of years, subject to clause (8)." Clause 6 provides is a sunset clause for the Fund which is twenty years whereas clause 8 provides for the voting threshold for the legislation that seeks to extend the life of the Fund after its lapse. The Committee was therefore not persuaded by the stakeholder since clause 32 seeks to suspend the effect of clause 6 of Article 204 of the Constitution which is contemplated under clause 7 of Article 204 of the Constitution.

CHAPTER FOUR

4 COMMITTEE RECOMMENDATION

90. The Committee having considered the Equalisation Fund (Administration) Bill, 2023 (Senate Bills No. 14 of 2023) recommends that the House approves the Bill with amendments as proposed in the schedule.

SIGNED..........DATE..... 6th Nov, 2024

HON. CPA KURIA KIMANI, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

THE NATIONAL ASSEMBLY BILLS LAID	
DATE: 06 NOV 2024	DAY: WED
BY: Hon. KURIA KIMANI, MP CHAIRPERSON	
BY: VIYIAN WAMBUI	

CHAPTER FIVE

5 SCHEDULE OF PROPOSED AMENDMENTS

91. The Committee proposed the following amendments to be considered by the House in the Committee stage:

CLAUSE 2

THAT, clause 2 of the Bill be amended by inserting the following definitions in its proper alphabetical sequence—

“Commission” means the Commission on Revenue Allocation;

Justification:

Since the word “Commission” has been referred to in the Bill in clauses 23, 25, 27, defining the term will provide clarity.

CLAUSE 4

THAT, clause 4 of the Bill, be amended by inserting the word “per cent” immediately after the words “one half”.

Justification:

The clause was erroneous as it referred to “one half of all revenue” instead of “one half percent of all revenue” as provided for in Article 204(1) of the Constitution.

CLAUSE 6

THAT, clause 6 of the Bill be amended—

(a) in subclause (1)—

(i) by deleting paragraph (g) and substituting therefor the following new paragraph—

“(g) three persons nominated by organizations working in equalization fund beneficiary counties and special interest groups of whom one shall be a person representing persons with disabilities;”

(ii) by deleting paragraph (h).

(b) in subclause (2) by deleting the words “section (1)(d), (e) and (f)” and substituting therefor the words “subsection (1)(d)(e), (f) and (g)”.

(c) in subclause (3) by deleting the words “subsection (1)(d), (e), (f) and (h)” and substituting therefor the words “subsection (1)(d)(e), (f) and (g)”.

(d) by inserting the following new subclause immediately after subclause (3)—

“(4) In appointing persons under subsection (1) (d), (e), (f) and (g), the Cabinet Secretary shall take into account the gender, regional and ethnic diversities of the people of Kenya, youth and persons with disabilities.”

Justification

The proposed amendments seek to remove the chairperson of the Commission on Revenue Allocation from membership since CRA is an independent office. Consequently, the amendment seeks to include three persons nominated by organizations working in equalization fund beneficiary counties and special interest groups of whom one shall be a person representing persons with disabilities. This is intended to make the Board more representative and inclusive. In addition, the amendments seek to align the cross-referencing in light of the proposed amendments. Finally, the proposed insertion of a new subclause seeks to ensure that the Board membership is aligned to the Constitution.

CLAUSE 7

THAT, clause 7 of the Bill be amended by deleting the words “section 6(1)(d), (e) and (f)” and substituting therefor the words “section 6(1) (a), (d), (e), (f) and (g)”.

Justification

This is a consequential amendment to amendments made to clause 6 of the Bill.

CLAUSE 8

THAT, clause 8 of the Bill be amended—

- (a) in the introductory statement by deleting the words “section 6(1)(d), (e) and (f)” and substituting therefor the words “section 6(1) (a), (d), (e), (f) and (g)”.

Justification

This is a consequential amendment to amendments made to clause 6 of the Bill.

- (b) in paragraph (b) by deleting subparagraph (iii);

Justification

Subparagraph (iv) covers subparagraph (iii). Further, retaining both subparagraphs could elicit different interpretations.

CLAUSE 9

THAT, clause 9(1) of the Bill be amended—

- (a) by deleting paragraph (a);
- (b) by deleting paragraph (c);

Justification

Articles 216(4) and 204(4) of the Constitution bestows the CRA with the role of identifying and providing recommendations on the distribution of resources for provision of basic services to the marginalised areas.

(c) in paragraph (j) by deleting the word “undertake” and substituting therefor the word “oversight”.

Justification

Clause 9(1)(j) of the Bill provides that the Board shall “undertake project public participation in line with Article 201 of the Constitution”. Clause 22 of the Bill provides that the Project Identification and Implementation Committee shall “undertake public participation in beneficiary counties”. Clause 25(1)(c) of the Bill provides that the county executive committee member shall, upon the identification of projects and programmes, prepare a workplan setting out “a report on the public participation undertaken during the process of identification of programmes and projects”. These provisions were duplicitous to the extent that the Board performs the same function in regard to public participation and might lead to wastage of public resources. Therefore, amendment seeks to provide that the Board shall oversight public participation.

CLAUSE 13

THAT, clause 13 of the Bill be amended—

(a) in subclause (1) by deleting the words “administrator to the Fund” and substituting therefor the words “Fund administrator”;

Justification

Clause 2 of the Bill defines the term “Fund administrator”. Therefore, the amendment seeks to provide for consistency in the use of the term.

(b) in subclause (4)—

(i) in the introductory statement by deleting the words “officer administering the Fund” and substituting therefor the words “Fund administrator”;

Justification

Clause 2 of the Bill defines the term “Fund administrator”. Therefore, the amendment seeks to provide for consistency in the use of the term.

(ii) by deleting the words “from time to time” and substituting therefor the words “in accordance with this Act”.

Justification

The Equalisation Fund is an independent Fund. The role of the National Treasury is limited to operational aspects of the establishment and maintenance of an account for the Equalisation Fund.

CLAUSE 15

THAT, clause 15 be amended—

(a) by deleting subclause (1) and substituting therefor the following new subclause—

“(1) There shall be a secretariat consisting of -

(a) administrator of the Fund; and

(b) such other public officers as the Fund shall, in consultation with the Board, designate for the proper performance of the functions of the secretariat under this Act.”

Justification

Firstly, clause 2 of the Bill defines the term “Fund administrator”. Therefore, the amendment seeks to provide for consistency in the use of the term. Secondly, the Amendment to clause 15(1) (b) of the Bill seeks to ensure the independence and efficient performance of the Board’s functions.

(b) in subclause (2)—

(i) by deleting the words “these Guidelines” appearing in paragraph (d) and substituting therefor the words “this Act”;

Justification

The amendment seeks to correct an editorial error.

(ii) by deleting the words “have been” appearing in paragraph (f) (i);

Justification

The amendment seeks to correct an editorial error.

(iii) by deleting the words “on Revenue Allocation” appearing in paragraph (f) (i).

Justification

The amendment seeks to maintain consistency in the use of the term “Commission” which is proposed to be defined in clause 2 of the Bill.

CLAUSE 16

THAT, clause 16 of the Bill be amended—

(a) in the introductory statement by deleting the words “on Revenue Allocation”;

Justification

The amendment seeks to maintain consistency in the use of the term “Commission” which is proposed to be defined in clause 2 of the Bill.

(b) by deleting the words “and sanitation” appearing in paragraph (a);

Justification

The proposed amendment seeks to align the paragraph to Article 204(2) of the Constitution.

(c) by deleting the words “on Revenue Allocation” appearing in paragraph (e).

Justification

The amendment seeks to maintain consistency in the use of the term “Commission” which is proposed to be defined in clause 2 of the Bill.

CLAUSE 17

THAT, clause 17 of the Bill be amended—

(a) in paragraph (a) by deleting the word “Governor” and substituting therefor the words “county secretary”;

(b) in paragraph (c) by inserting the words “from areas defined by the Commission as marginalised”;

(c) by deleting paragraph (d);

(d) by deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) a public officer responsible for county planning appointed by the Cabinet Secretary.”

Justification

The proposed amendments seek to replace the Governor with County Secretary since the County Technical Committee is a technical one. Further, the amendments address the duplication of representation from the County Governments and seeks to provide a balanced membership.

CLAUSE 19

THAT, clause 19 of the Bill be amended--

(a) in paragraph (b) by deleting the words “not more than two” and substituting therefor the word “one”;

(b) in paragraph (c) by deleting the words “not more than two” and substituting therefor the word “one”;

(c) by deleting paragraph (d) and substituting therefor the following new paragraphs—

“(d) ward administrators of areas defined by the Commission as marginalised;

- (da) a representative of women, youth and persons with disabilities from marginalised areas;
- (db) a representative of faith-based groups and non-governmental organisations; and"

Justification

The proposed amendments are consequential after reducing the committees from three to two. The membership seeks to include some members proposed in Project Identification and Implementation Committee since the Committee is proposed to be deleted.

CLAUSE 20

THAT, the Bill be amended by deleting clause 20 and substituting therefor the following new clause—

Functions of the sub-county technical committee.	20. The functions of the sub-county technical committee shall be to—
	<ul style="list-style-type: none"> (a) undertake public participation in beneficiary counties; (b) identify and prioritize project in beneficiary areas in line with guidelines issued by the Fund administrator; (c) prepare and evaluate project funding proposals; (d) assess the feasibility and cost all project proposals; (e) submit project proposals and funding requests to the County Technical Committee; (f) monitor all projects; (g) prepare quarterly reports on funds received and implementation status for submission to the county technical committee and the county executive committee member; (h) prepare and submit to the county technical committee and the county executive committee member annual reports on implementation of all projects.

Justification

The amendment merges and realigns the functions of the Project Identification and Implementation Committee with those of the sub-county technical committee due to the proposed deletion of the Project Identification and Implementation Committee. The three committees are proposed to be reduced to two.

CLAUSE 22

THAT, clause 22 of the Bill be deleted.

Justification

This is a consequential amendment arising from the deletion of clause 21 of the Bill.

CLAUSE 23

THAT, clause 23 of the Bill be amended in subclause (1)—

- (a) by deleting the words "Secretary of the Board" appearing in paragraph (a) and substituting therefor the words "Fund administrator";
- (b) by deleting the words "Secretary of the Board" appearing in paragraph (b) and substituting therefor the words "Fund administrator";
- (c) by deleting the words "Secretary of the Board" appearing in paragraph (c) and substituting therefor the words "Fund administrator";
- (d) by deleting the words "Secretary of the Board" appearing in paragraph (d) and substituting therefor the words "Fund administrator";
- (e) by deleting the words "Secretary of the Board" appearing in paragraph (e) and substituting therefor the words "Fund administrator".

Justification

The amendments seek to clarify who the Secretary of the Board is.

CLAUSE 24

THAT, clause 24 of the Bill be deleted.

Justification

The amendment seeks to rearrange the flow of clauses 24 and 25 of the Bill so that preparation of workplans is provided for first then the approval of workplans.

CLAUSE 25

THAT, clause 25 of the Bil be deleted.

Justification

The amendment seeks to rearrange the flow of clauses 24 and 25 of the Bill so that preparation of workplans is provided for first then the approval of workplans.

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clauses immediately after clause 23—

- Preparation of workplans.
- 23A.** (1) The county executive committee member shall, upon the identification of projects and programmes under section 22, prepare a workplan setting out —
- (a) a schedule of projects and programmes proposed to be undertaken by the county government in the areas identified by the Commission;
 - (b) a technical assessment of the viability of the projects and programmes;
 - (c) a report on the public participation undertaken during the process of identification of programmes and projects;
 - (d) an assessment of the manner in which the programmes or projects would be expected to address the shortcomings identified by the Commission in the provision of the identified basic needs;
 - (e) an assessment of how the programmes and projects identified impact on the County Integrated Development Plan; and
 - (f) the approximate cost of the works to be undertaken in relation to a project or programme identified in the workplan.
- (2) In identifying programs and projects for inclusion in the workplan, the county executive committee member shall —
- (a) take into account —
 - (i) the criteria and other recommendation made by the Commission;
 - (ii) the costing of the project and the time required for the implementation of the project on a priority basis;
 - (iii) recommendations, standards and guidelines issued by the Advisory Board;
 - (iv) the interventions required to be undertaken on a priority basis in order to address the needs identified by the

- Commission for the provision of identified basic services; and
- (v) the recommendations of the respective Ministry or State Department;
- (b) undertake public participation using the structures established for citizen participation under section 91 of the County Governments Act; and
- (c) collaborate with the relevant Ministry or State Department.
- Cap. 265. (3) The county executive committee member shall ensure that a workplan prepared under subsection (1) is aligned to the annual development plan of the county prepared under the Public Finance Management Act.
- Cap. 412A. (4) The relevant Ministry or State Department shall make its recommendations to the County Executive Committee Member on the proposed workplan within fourteen days of receipt of a request under subsection 2(c) of this Act.
- Approval of workplan. **23B.** The County Executive Committee Member shall submit workplans through the respective county technical committee to the Board for approval.

Justification

The amendments seek to rearrange the flow of clauses 24 and 25 of the Bill so that preparation of workplans is provided for first then the approval of workplans. Further, since clause 2 of the Bill defines county executive committee member to mean the county executive committee member responsible for finance, the words "responsible for matters relating to finance" is deleted to remove the repetition. Also, the words "Commission on Revenue Allocation" are replaced with "Commission" to align them to the proposed amendments to clause 2 of the Bill to define Commission. In addition, a cross-referencing error in clause 25(1) has been corrected to refer to clause 22 of the Bill.

CLAUSE 26

THAT, clause 26 of the Bill be amended in subclause (2)—

- (a) by deleting the words "on Revenue Allocation" appearing in paragraph (b);
- (b) by deleting paragraph (d).

Justification

The words "Commission on Revenue Allocation" are replaced with "Commission" to align them to the proposed amendments to clause 2 of the Bill to define Commission.

Further, the amendment seeks to align the functions to the Advisory Board's functions which makes decisions regarding the projects to be undertaken by the Equalization Fund.

CLAUSE 28

THAT, clause 28 of the Bill be amended in subclause (3) by deleting the words "The officer administering the Fund" and substituting therefor the words "Fund administrator".

Justification

There were inconsistencies in the use of "administrator to the Fund", "Fund Administrator", and "Officer administering the Fund" in the Bill. Whereas clause 2 of the Bill defines "Fund administrator", this is not consistently applied. Therefore, the amendment seeks to ensure consistency in the use of "Fund administrator" in the Bill.

CLAUSE 29

THAT, clause 29 of the Bill be amended—

- (a) in subclause (1) by deleting the words "The administrator of the Fund" and substituting therefor the words "Fund administrator".

Justification

There were inconsistencies in the use of "administrator to the Fund", "Fund Administrator", and "Officer administering the Fund" in the Bill. Whereas clause 2 of the Bill defines "Fund administrator", this is not consistently applied. Therefore, the amendment seeks to ensure consistency in the use of "Fund administrator" in the Bill.

- (b) by deleting subclause (2) and substituting therefor the following new subclauses—

"(2) Where a withdrawal from the Fund is authorized under an Act of Parliament that approves the appropriation of money, The National Treasury shall make a requisition for withdrawal from the Consolidated Fund to the Equalisation Fund to the Controller of Budget for authorization.

(2A) The Fund administrator shall make a requisition to the Controller of Budget for withdrawal from the Equalisation Fund to the respective spending agencies' accounts."

Justification

The amendment seeks to provide for a two-tier withdrawal process to clearly delineate the role of the National Treasury and the Fund administrator.

(c) in subclause (3) by deleting the words "the officer administering the Fund" and substituting therefor the words "Fund administrator";

Justification

There were inconsistencies in the use of "administrator to the Fund", "Fund Administrator", and "Officer administering the Fund" in the Bill. Whereas clause 2 of the Bill defines "Fund administrator", this is not consistently applied. Therefore, the amendment seeks to ensure consistency in the use of "Fund administrator" in the Bill.

(d) by inserting the following new subclause immediately after subclause (4)—
"(4) The Controller of Budget shall develop regulations for withdrawal of funds from the Equalisation Fund.

Justification

According to Article 206 of the constitution, the Consolidated Fund is the First entry point of all the money raised or received on behalf of the national government. Article 228 of the Constitution requires the Controller of Budget to be satisfied that the withdrawal is in line with the law. These regulations will assist the Controller of Budget in ensuring the office gets assurance and satisfaction that the withdrawal is authorised by law.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 30—

Monitoring
evaluation.

and

30A. (1) Not later than three months after the end of each financial year, the county executive committee members in the respective county governments shall submit to the Advisory Board—

- (a) a schedule of the programmes and projects implemented pursuant to Article 204 of the Constitution and the expected completion date;
- (b) an assessment report of the impact of the programmes and projects that have been implemented pursuant to Article 204 of the Constitution;
- (c) a financial report on the projects and programmes.

(2) The Advisory Board shall prepare the report for approval by the Cabinet Secretary.

(3) The Cabinet Secretary shall submit the report to the National Assembly and the Senate within fourteen days of receipt of the report under subsection (3).

Justification

The amendment seeks to provide for monitoring and evaluation of the Fund to ensure its effective utilization and information on its progress.

CLAUSE 31

THAT, clause 31 of the Bill be amended by deleting paragraph (b) and substituting therefore the following new paragraphs—

“(b) The National Treasury shall make a requisition to the Controller of Budget for authorization for withdrawal of funds from the Consolidated Fund to the Equalisation Fund for the completion of the projects;

(c) The Fund administrator shall make a requisition to the Controller of Budget for authorization for withdrawal from the Equalisation Fund to the respective spending agencies' accounts of monies required for the completion of the projects.”

Justification

The National Treasury's responsibility is to make requisition for the transfer of funds into the Equalisation Fund and not transfer of funds to the county governments, since that is the purview of the Fund administrator.

NEW CLAUSE

THAT, the Bill be amended by inserting the following clause immediately after clause 32—

Repeal of section 18 of Cap.
412A.

32A. Section 18 of the Public
Finance Management Act is repealed.

Justification

This is a consequential amendment as result of amendments to clause 29 of the Bill which provides for a two-tier withdrawal process to clearly delineate the role of the National Treasury and the Fund administrator. It is proposed that the National Treasury shall make a requisition for withdrawal from the Consolidated Fund to the Equalisation Fund to the Controller of Budget for authorization whereas the Fund administrator shall make a requisition to the Controller of Budget for withdrawal from the Equalisation Fund to the respective spending agencies' accounts.



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.
ADOPTION LIST

REPORT ON THE THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023
(SENATE BILLS NO. 14 OF 2023)

We, the Members of the Departmental Committee on Finance and National Planning have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, **Wednesday, 6th November 2024.**

S/NO.	NAME	SIGNATURE
1.	HON. (CPA). KURIA KIMANI, MP - CHAIRPERSON	
2.	HON. (AMB). BENJAMIN KIPKIRUI LANGAT, MP – VICE CHAIRPERSON	
3.	HON. DR. ADAN KEYNAN WEHLIYE, MP	
4.	HON. GEORGE SUNKUYIA RISA, MP	
5.	HON. (CPA) JOSEPH MAERO OYULA, MP	
6.	HON. ANDREW ADIPO OKUOME, MP	
7.	HON. DAVID MWALIKA MBONI, MP	
8.	HON. JOSEPH MAKILAP KIPKOROS, MP	
9.	HON. JOSEPH KAMAU MUNYORO, MP	
10.	HON. (CPA) JULIUS KIPLETING RUTTO, MP	
11.	HON. PAUL KIBICHIY BIEGO, MP	
12.	HON. UMUL KER SHEIKH KASSIM, MP	
13.	HON. DR. SHADRACK MWITI ITHINJI, MP	
14.	HON. DR. JOHN ARIKO NAMOIT, MP	
15.	HON. MOHAMED SOUD MACHELE, MP	

MINUTES OF THE 93RD SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY 6TH NOVEMBER, 2024 IN COMMITTEE ROOM 21, 5TH FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

1. Hon. CPA Kuria Kimani, MP - Chairperson
2. Hon. (Amb.) Benjamin Kipkirui Langat, MP - Vice- Chairperson
3. Hon. George Sunkuiya Risa, MP
4. Hon. Joseph Kamau Munyoro, MP
5. Hon. CPA. Joseph Maero Oyula, MP
6. Hon. Andrew Adipo Okuome, MP
7. Hon. David Mwalika Mboni, MP
8. Hon. Joseph Makilap Kipkoros, MP
9. Hon. CPA Julius Kipletting Ruto, MP
10. Hon. Paul Kibichiy Biego, MP
11. Hon. (Dr.) John Ariko Namoit, MP

ABSENT WITH APOLOGY

1. Hon. (Dr.) Shadrack Mwiti Ithinji, MP
2. Hon. Mohamed Soud Machele, MP
3. Hon. Umul Ker Sheikh Kassim, MP
4. Hon. (Dr.) Adan Keynan Wehliye, MP

IN ATTENDANCE

SECRETARIAT

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. Benjamin Magut | - | Principal Clerk Assistant II |
| 2. Mr. Benson Kamande | - | Clerk Assistant III |
| 3. Mr. Salem Lorot | - | Legal Counsel I |
| 4. Ms. Nelly Ondieki | - | Research Officer III |
| 5. Ms. Joyce Wachera | - | Hansard Officer |
| 6. Mr. Benson Muchiri | - | Audio officer III |
| 7. Mr. Benson Muthuri | - | Serjeant at Arms |
| 8. Mr. Ian Kinuthia | - | Intern |

AGENDA

1. Prayers
2. Preliminaries/Introductions
3. Confirmation of Minutes/Matters Arising
Consideration and adoption of the report on The Equalisation Fund (Administration) Bill, 2023 (Senate Bills No. 14 of 2023)
4. Any other Business
5. Adjournment/Date of the Next Sitting.

MIN No. NA/F & NP/2024/303: PRELIMINARIES

The meeting was called to order at 10.12 am followed by a word of prayer and introductions.

MIN No. NA/F & NP/2024/304: CONFIRMATION OF MINUTES

Confirmations of the minutes of the previous sittings was deferred to the next sitting.

MIN No. NA/F & NP/2024/305: Consideration and adoption of the report on The Equalisation Fund (Administration) Bill, 2023 (Senate Bills No. 14 of 2023)

The meeting deliberated at length and agreed on the observations and recommendations contained in Chapter four and five of the Report. The Report was thereafter adopted with amendments having been proposed by Hon. George Sunkuiya Risa, MP and seconded by Hon. Paul Kibichiy Biego, MP.

(Comprehensive details of the proposed amendments are contained in Chapter Five of the Report on the Consideration of The Equalisation Fund (Administration) Bill, 2023 (Senate Bills No. 14 of 2023).

MIN No. NA/F & NP/2024/306: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.05 p.m. The next meeting will be held on notice.

SIGNED:  DATE..... 6th Nov, 2024

**HON. CPA. KURIA KIMANI, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND
NATIONAL PLANNING**

Dialogue team agrees on five issues, retreats to compile its report



National Dialogue Committee members led by co-chairs Kimani Ichung'wah and Kalonzo Musyoka at Bomas of Kenya yesterday. (Samson Wira, Standard)

- ▶ Cost of living among issues given priority as committee set to write a report.
- ▶ Economic experts gave their views to the team in a bid to ease cost of living.

JUDAH BEN-HUR, NAIROBI

The National Dialogue Committee concluded its deliberations yesterday and announced it had reached consensus on all five issues including the cost of living.

This marks the end of 73 days of extensive engagements. Committee co-chairman Kimani Ichung'wah announced that they had made significant progress on all agenda items. "We have made tremendous progress and agreed on all the five agenda items," he said.

The development comes nearly a month after the committee agreed on four other issues including the cost of living. This prompted invitation of economic experts to arrive at a workable solution to the high cost of living that continues to choke Kenyans.

Last week, economic experts blamed unnecessary government expenditure, exaggerated budgeting and integrity issues on the economic crisis that has seen a rise in inflation, increased taxes and skyrocketing cost of living.

The Controller of Budget Margaret Nyakang'o, the Institute of Economic Affairs CEO Kwame Ninsin and others said that some solutions to the economic perils can be dealt with by addressing government spending and Parliament diligently scrutinising the budgeting process before approval.

"If Parliament did its work diligently and went line by line on the budget and asking, why are we buying this quantity of things, you would find a lot of space for savings," said Kwame.

Dr Nyakang'o expressed unease with the traditional Treasury's inability to provide a clear count of the projects to which loans were allo-

cated. "I have been approving payments for public debt, and I have seen many of those things cannot be identified. You cannot tell what the money was meant for, and therefore there was no economic gain from that borrowing. That is what we have been doing for a long time," she said.

The experts also called on a review of the tax regime which has seen taxes rise in the past year. Appearing before the committee on Monday, Dr Abraham Rugo said the government should continue cutting down on spending and taxation arguing that a lot can be saved by reviewing state-owned enterprises which gobble up resources and offer no returns. "We can't continue to save companies that are not performing yet doing businesses," he said.

But Treasury Cabinet Secretary Njuguna Ndung'u denied allegations of exaggerating the budget. He argued that the only way to resuscitate the economy and deal with the rising cost of living would be to nurture the markets and support manufacturing and housing sectors.

"The Hustler Fund, government to government deal, affordable housing is an intervention. The issue is you start it off and once it is working, you release it to the market. For it to work, the market has to be nurtured," he said.

"If markets don't function, production will fail downstream. You cannot produce if the market is not going to give you the returns. There's no way you will find people producing food when they cannot sell the food," he added.

The committee is tasked with facilitating dialogue on national issues around cost of living, audit of the 2022 elections and fidelity of political parties.

The team that was also looking at proposals of entrenching the office of the Prime Cabinet Secretary and creating the office of the official leader of opposition has not only addressed the predetermined agenda items but has also taken into consideration additional matters raised by Kenyans during the deliberations.

newsdesk@standardmedia.co.ke



REPUBLIC OF KENYA THE NATIONAL ASSEMBLY THIRTEENTH PARLIAMENT-SECOND SESSION (2023)

IN THE MATTER OF ARTICLE 118 (1) (b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

1. THE ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS No. 40 OF 2023);
2. THE NATIONAL LOTTERY BILL (NATIONAL ASSEMBLY BILLS No. 69 OF 2023);
3. THE GAMBLING CONTROL BILL (NATIONAL ASSEMBLY BILLS No. 70 OF 2023);
4. THE LEARNERS WITH DISABILITIES BILL (SENATE BILLS No. 4 OF 2023); AND
5. THE EQUALISATION FUND (ADMINISTRATION) BILL (SENATE BILLS No. 14 OF 2023)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees;

AND WHEREAS, the Anti-Corruption and Economic Crimes (Amendment) Bill (National Assembly Bills No. 40 of 2023); the National Lottery Bill (National Assembly Bills No. 69 of 2023); the Gambling Control Bill (National Assembly Bills No. 70 of 2023); the Learners with Disabilities Bill (Senate Bills No. 4 of 2023); and the Equalisation Fund (Administration) Bill (Senate Bills No. 14 of 2023) have been read a First Time and referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

1. **The Anti-Corruption and Economic Crimes (Amendment) Bill (National Assembly Bills No. 40 of 2023)** sponsored by **Hon. Geoffrey Kariuki Ruku, MP** seeks to amend section 45 of the Anti-Corruption and Economic Crimes Act, 2003 to remove the inordinate and undue criminalization of flaws in public procurement law.
2. **The National Lottery Bill (National Assembly Bills No. 69 of 2023)** sponsored by **Hon. Kimani Ichung'wah, MP, the Leader of Majority Party** seeks to provide a legislative framework for the establishment and operation of a socially responsible National Lottery for pooling of resources to be directed to good causes and funding of critical areas. The Bill further proposes a framework for the conduct and regulation of the National Lottery.
3. **The Gambling Control Bill (National Assembly Bills No. 70 of 2023)** sponsored by **Hon. Kimani Ichung'wah, MP, the Leader of Majority Party** seeks to repeal and replace the Betting, Lotteries and Gaming Act (Cap 131) and provide a legislative framework for the regulation of gambling in Kenya and incorporate safe gambling principles in the gambling sector. Further, the Bill seeks to regulate betting, casinos and other forms of gambling including the authorization of prize competitions, public lotteries and media promotions.
4. **The Learners with Disabilities Bill (Senate Bills No. 4 of 2023)** seeks to provide a proper legal framework to ensure the actualization of the right to basic education for learners with disabilities in Kenya at all three levels of education. The Bill obligates the National Government, through the Ministry of Education and the County governments, to carry out their duties and bring the special needs education of learners with disabilities to parity with normal learners and to end the exclusion of learners with disabilities from the education cycle.
5. **The Equalisation Fund (Administration) Bill (Senate Bills No. 14 of 2023)** seeks to provide the administrative structure for the management of the Equalisation Fund and to establish the criteria through which projects contemplated under Article 204(2) of the Constitution are The Bill also seeks to extend the pendency of the Fund in accordance with Article 204(B) of the Constitution to ensure the purpose of the Fund is met.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees listed below-

S/ No.	BILL	COMMITTEE
1.	The Anti-Corruption and Economic Crimes (Amendment) Bill (National Assembly Bills No. 40 of 2023)	Justice and Legal Affairs
2.	The National Lottery Bill (National Assembly Bills No. 69 of 2023)	Sports and Culture
3.	The Gambling Control Bill (National Assembly Bills No. 70 of 2023)	
4.	The Learners with Disabilities Bill (Senate Bills No. 4 of 2023)	Education
5.	The Equalisation Fund (Administration) Bill (Senate Bills No. 14 of 2023)	Finance and National Planning

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/the-national-assembly/house-business/bills

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to cna@parliament.go.ke to be received on or before **Friday 17th November, 2023 at 5.00 p.m.**

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

10th November 2023

"For the Welfare of Society and the Just Government of the People"



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
 THIRTEENTH PARLIAMENT-SECOND SESSION (2023)

IN THE MATTER OF ARTICLE 118(1)(b) OF THE CONSTITUTION
 AND
 IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

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WHEREAS, Article 118(1) (b) of the Constitution and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees;

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5. **The Equalisation Fund (Administration) Bill (Senate Bills No. 14 of 2023)** seeks to provide the administrative structure for the management of the Equalisation Fund and to establish the criteria through which projects contemplated under Article 204(2) of the Constitution are The Bill also seeks to extend the pendency of the Fund in accordance with Article 204(8) of the Constitution to ensure the purpose of the Fund is met.

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S. NJOROGE
 CLERK OF THE NATIONAL ASSEMBLY

10th November 2023

"For the Welfare of Society and the Just Government of the People"



NATIONAL YOUTH SERVICE



Telegrams: VIJANA
 Tel: +254-020-26322925
 Fax: +254-020-2378129
 Website: www.nys.go.ke
 Email: Director.general@nys.go.ke

National Youth Service
 Headquarters
 P O Box 30397 - 01000
 NAIROBI - KENYA

**ADDENDUM ON JOB ADVERTISEMENT FOR THE
 DIRECTOR GENERAL / CHIEF EXECUTIVE OFFICER
 POSITION AT THE NATIONAL YOUTH SERVICE (NYS)**

Please note that the closing date for submission of applications in respect of the advertised post of Director General, NYS which appeared on MyGov on **Tuesday, 30th October, 2023** has been extended from **Sunday, 12th November, 2023** to **Tuesday, 21st November, 2023**.

Lt Gen (Rtd) Njuki Mwaniki, MGH, CBS, OGW, ndc (K)
 CHAIRMAN, NATIONAL YOUTH SERVICE COUNCIL



THE CO-OPERATIVE UNIVERSITY OF KENYA
 Empowering Communities

P.O BOX 24814-00502, Karen-Nairobi Tel:020-2430127 / 2679456, 0724 311 806
 Website: www.cuk.ac.ke Email: registrars@cuk.ac.ke

OFFICE OF THE REGISTRAR
 (ACADEMIC, CO-OPERATIVE DEVELOPMENT, RESEARCH AND INNOVATION)

THE 8TH GRADUATION CEREMONY ANNOUNCEMENT

The 8th Graduation Ceremony of The Co-operative University of Kenya (CUC) will be held at the **Graduation Square, Main Campus, Karen - Nairobi** on **Friday, 1st December 2023** starting at **8:00 a.m.** All students who have fulfilled the requirements for conferment of Degrees and award of Diplomas and Certificates during the **2022/2023 Academic Year** are invited to participate.

GRADUATION STATUS

Students who successfully completed their studies in the **2022/2023 Academic Year** and those from previous Academic Years who had not graduated are advised to confirm their appearance on the graduation list by **Wednesday, 22nd November 2023**.

APPLICATION FOR GRADUATION

Graduands who have not yet applied are reminded to apply for the **2023 Graduation** online through their Students Portal <https://studentportal.cuk.ac.ke> as per the instructions and guidelines that have been available on the University website www.cuk.ac.ke/education before **Wednesday, 15th November 2023**.

CLEARING OF FEES BALANCES

Graduands are required to clear all applicable fees including graduation fee **before applying for graduation**. Anyone with fees arrears will therefore be excluded from the graduation list.

GRADUATION FEES

The graduation fees are as indicated in the table below:

S/N	AWARD	GRADUATION FEES (KES)	S/N	AWARD	GRADUATION FEES (KES)
1	Certificates	4,000.00	2	Diplomas	5,000.00
3	Bachelors	6,000.00	4	Masters	7,000.00

All graduation fee payments must be made before **Friday, 17th November 2023** through Co-operative Bank. **Account Number: 0125062663800** Karen Branch or Equity Bank. **Account Number: 125027707862** Karen Branch. Failure to pay the graduation fees on time will lead to exclusion from the graduation list.

ACADEMIC ATTIRE

Graduation gowns will be available for hire upon presentation of the original National identity card and of duly filled gown hiring form printed from the Students Portal upon successful application for graduation. Gowns shall be collected from respective Schools/Directorates of Main Campus (Karen, Nairobi) starting from **Thursday, 23rd November 2023** to **Wednesday, 29th November 2023** and should be returned at the same venue by **Thursday, 14th December 2023**. Failure to return the gown by the stated date will attract a penalty of **KES. 500 per day**.

REHEARSAL

All Graduands are expected to attend the rehearsals on **Thursday, 30th November 2023 at 10.00 a.m.** at the Graduation Square, Main Campus, Karen, Nairobi.

INVITATION CARDS

At the time of collecting the graduation gown, each graduand will be issued with **two (2) invitation cards** for their guests. Persons without graduation invitation cards shall NOT be allowed into the Graduation Square.

COLLECTION OF CERTIFICATES

Graduands are required to collect their Certificates within a period of **5 (5) Months** after the graduation. Any uncollected Certificate will attract annual penalty as specified in the University Policy.

PUNCTUALITY

Graduands and their guests are required to be seated by **8.00 a.m.** Those who arrive late shall NOT be allowed into the Graduation Square.

For further information contact the Office of the Registrar Academic, Co-operative Development, Research and Innovation (ACDRI) via Telephone 0724 311 806 e-mail registrars@cuk.ac.ke Website www.cuk.ac.ke

REGISTRAR, ACDRI

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The Institute of Certified Public Accountants of Kenya

SUBMISSION

ON

THE EQUALISATION FUND (ADMINISTRATION) BILL 2023

AUGUST 2024

SUBMISSIONS ON THE EQUALISATION FUND (ADMINISTRATION) BILL 2023

1. Introduction

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants established under the Accountants Act of 1978, and as repealed under the Accountants Act Number 15 of 2008, mandated to develop and regulate the Accountancy Profession in Kenya. It is also a member of the International Federation of Accountants (IFAC), the global umbrella body for the accountancy profession and Pan Africa Federation of Accountants (PAFA), the continental body of Accountants.

2. Background

a. Equalization Fund

The Equalization Fund was established by Article 204 of the Kenyan Constitution, to address regional inequalities in access to basic services. The fund is allocated at 0.5% of annual national revenue to improve roads and basic services such as water, roads, health facilities, and electricity in marginalized areas. It is managed by the National Treasury and utilized only for purposes approved through Parliament and guided by recommendations from the Commission on Revenue Allocation. Withdrawals from the fund are made only through the approval of the Controller of Budget. Although the Equalization Fund is set to end in 2030, there has been utilization of the provision for its extension through legislative action.

b. Audit Findings for Year 2022/2023

According to the Auditor General's report for the year ended June 2023, only an amount of Kshs.12,400,000,000 out of the expected Kshs.51,586,214,050 of the total entitlement from the financial years 2011/2012 to 2022/2023 had been transferred to the Equalization Fund Account. This further strained the realization of the Fund's intended objective of providing basic services to marginalized areas.

To address non-compliance issues, the Equalization Fund Appropriation Act, 2023, enacted on July 1, 2023, authorizes the allocation and expenditure of funds from the Equalization Fund for the fiscal year ending June 30, 2024, and to appropriate that sum for certain public basic services.

3. The Equalisation Fund (Administration) Bill 2023

The Equalisation Fund (Administration) Bill 2023, initially gazetted on April 12, 2023, and amended and passed by the Senate on October 12, 2023, is a significant step towards the management of the Equalisation Fund. This Bill establishes administrative structures and an advisory board to oversee the Fund's operations.

ICPAK acknowledges that the Bill's operational framework aligns closely with the principles outlined in the Public Finance Management Regulations. This alignment is anticipated to effectively address existing imbalances in the distribution of projects and programmes for financing under the Fund. In its capacity as a regulator of the accountancy profession, ICPAK advocates for its representation on the advisory board and technical committees to ensure active participation in promoting governance and accountability within the administration of the Fund.

ICPAK has reviewed the Bill and makes the following recommendations:

#	CLAUSE / AREA	ISSUE OF CONCERN	RECOMMENDATION	RATIONALE/ LIKELY IMPACT
1.	Clause 4 Source of the Fund	The word 'percent' was not included	Amend to read as follows; 4. The Fund shall, pursuant to Article 204(1) of the Constitution, consist of one-half percent of all revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.	This inclusion provides clarity in the clause.
2.	Clause 6 (1): Establishment of Equalization Fund Advisory Board	The bill lacks representation from a professional body	6. (1) There is established a Board to be known as the Equalization Fund Advisory Board which shall consist of— (a) the Chairperson who shall be appointed by the Cabinet Secretary;	This will enhance financial oversight and promote adherence to high standards of governance and accountability.

#	CLAUSE / AREA	ISSUE OF CONCERN	RECOMMENDATION	RATIONALE/ LIKELY IMPACT
			<ul style="list-style-type: none"> (b) the Principal Secretary responsible for matters relating to finance; (c) the Principal Secretary responsible for matters relating to devolution or a representative designated in writing; (d) one person from a pastoralist community nominated by the National Assembly; (e) one person nominated by the Senate; (f) one person nominated by the Council of Governors drawn from areas identified as marginalized by the Commission on Revenue Allocation; (g) the Chairperson of the Commission on Revenue Allocation or a representative designated in writing; (h) the Controller of Budget or a representative designated in writing; (i) a member from the professional body regulating Accountants; (j) the Chief Executive Officer who shall be secretary of the Board. 	
3.	Clause 6(3)	The provision limits representation from a professional body.	<p>Amend to read as follows;</p> <p>(3) A person appointed under section (1)(d), (e), (f), (h) and (i) shall serve for a term of three years renewable for one further term.</p>	A three-year term, with the possibility of renewal, will provide the board with sufficient time to effectively implement and realize its vision

#	CLAUSE / AREA	ISSUE OF CONCERN	RECOMMENDATION	RATIONALE/ LIKELY IMPACT
4.	Clause 8 b(i): vacation of office	Seeking permission from the Board is rather ambiguous	Amend to read as follows: (i) has been absent from three consecutive meetings of the board without permission of the Chairperson.	To align with Mwongozo code of Governance
5.	Clause 9 i(a); Functions of the Board	Use revenue appropriation instead of revenue distribution	Amend to read as follows; (a) Advise and make recommendations to the cabinet secretary on the appropriation of resources for the provision of the basic services to the marginalized areas under Article 204 of the constitution in line with the recommendations of the commission on Revenue Allocation	To align the board mandate
6.	Clause 9: Functions of the board	The current provision does not align with Article 204(3).	9. (1) The Advisory Board shall — (a) advise and make recommendations to the Cabinet Secretary on the distribution of resources for the provision of the basic services to the marginalized areas under Article 204 of the Constitution in line with the recommendations of the	This will ensure legal compliance and reinforce the authority of the actions taken.

ICPAK Submissions on the Equalisation Fund (Administration) Bill 2023

#	CLAUSE / AREA	ISSUE OF CONCERN	RECOMMENDATION	RATIONALE/ LIKELY IMPACT
			<p>Commission on Revenue Allocation;</p> <p>(b) appraise and evaluate projects proposed under the workplans submitted to the Advisory Board under section 15 to ensure compliance with the Constitution and the recommendations issued by the Commission on Revenue Allocation;</p> <p>(c) make recommendations on the priority areas requiring financing and implementation in accordance with the workplans considered under section (b) and in line with the recommendations of the Commission on Revenue Allocation;</p> <p>(d) oversee, in consultation with the County Governments, the implementation of the projects to ensure compliance with the Constitution;</p> <p>(e) monitor and evaluate the projects implemented by County Governments to determine their impact in addressing the factors contributing to the marginalisation of the areas identified in the counties;</p>	

#	CLAUSE / AREA	ISSUE OF CONCERN	RECOMMENDATION	RATIONALE/ LIKELY IMPACT
			<p>(f) put in place measures for transparency and accountability in the implementation of projects by County Governments;</p> <p>(g) establish a framework for collaboration between the National Government and County Governments in the implementation of projects in line with the Constitution, the recommendations of the Commission on Revenue Allocation and these Guidelines;</p> <p>(h) review the consolidated quarterly reports prepared by the officer administering the Fund on the implementation of the projects and make recommendations to the Cabinet Secretary on performance improvement;</p> <p>(i) review the annual estimates of expenditure of the Fund for approval by the Cabinet Secretary;</p> <p>(j) undertake project public participation in line with Article 201 of the Constitution;</p> <p>(k) develop a policy for making conditional grants to counties in which marginalized</p>	

ICPAK Submissions on the Equalisation Fund (Administration) Bill 2023

#	CLAUSE / AREA	ISSUE OF CONCERN	RECOMMENDATION	RATIONALE/ LIKELY IMPACT
			<p>communities exist per article 204(3)(b); and</p> <p>(l) carry out such other functions that may be necessary for the achievement of the objects and purposes of this Act or that may be conferred by any other law.</p>	
7.	Clause 10: Decisions of the Cabinet Secretary	The current provisions are not in alignment with articles 204(3)(a), And 204 (4)	<p>Delete this provision and amend as follows:</p> <p>10. The cabinet secretary shall adopt the board's recommendations, develop a budget, and present it to the Commission on Revenue Allocation for approval, with or without modification, in accordance with article 204(4), prior to the inclusion of the budget, in an appropriation bill, for submission of the estimates for expenditure to the National Assembly, in accordance with article 221(1).</p>	This will ensure legal compliance and reinforce the authority of the actions taken.
8.	Clause 13(2): Officer administering the fund	The qualifications as provided in the bill are limiting for the position of Chief Executive Officer	<p>Amend to read as follows;</p> <p>(2) A person is qualified for appointment as a Chief Executive Officer if the person –</p> <p>a) Holds a degree and Master's from a university recognized in Kenya.</p> <p>b) Has at least ten years knowledge and experience in financial</p>	This is in line with the Mwongozo guidelines and is best practices observed in public entity bodies.

#	CLAUSE / AREA	ISSUE OF CONCERN	RECOMMENDATION	RATIONALE/ LIKELY IMPACT
			management, business administration, economics or law. c) A member in good standing of a relevant professional body. d) Meet the requirements of Chapter six of the Constitution. e) Has served in a position of senior management for a period of at least five years. f) Meets the requirements of the fit and proper test.	
9.	Clause 17: Establishment of County Technical Committees	The bill limits representation from a professional body.	Each County Commissioner of an eligible county shall establish and convene a county technical committee comprising of- a) chairperson who shall be the County Commissioner; b) the relevant county executive committee member for Finance; c) Constituency Development Fund Managers; d) a representative of the relevant County Assembly; e) a public officer representing the implementing sector with prioritized projects; f) a member from the professional body regulating Accountants; g) representative of the relevant County Assembly.	This will enhance financial oversight and promote adherence to high standards of governance and accountability.

ICPAK Submissions on the Equalisation Fund (Administration) Bill 2023

#	CLAUSE / AREA	ISSUE OF CONCERN	RECOMMENDATION	RATIONALE/ LIKELY IMPACT
10.	Clause 18: Functions of the County Technical Committee	The bill describes and lists the functions of the subcounty technical committee and limits the functions of the technical county committee.	Define the responsibilities and procedures for approving projects to be financed from the Fund.	The lack of clarity on the functions may lead to conflicts in how responsibilities are managed across different levels of the committee structure.
11.	Clause 28(i)(a); Report by County Executive Member	Typo error on word Advisory	Amend to read; (a) Prepare and submit to Advisory Board	This provides clarity to the provision.
12.	Clause 29: Withdrawals from the fund	The current provision is not aligned with article 204(9)	Amend to read as follows; 29. Where a withdrawal from the Fund is authorized under an Act of Parliament that approves the appropriation of money, the officer administering the Fund shall make a requisition for the withdrawal and submit it to the Controller of Budget for authorization, in accordance with Article 204(9) of the Constitution.	This will ensure legal compliance and reinforce the authority of the actions taken.

5. ICPAK Recommendations

- 1) ICPAK recommends that it be granted representation on both the advisory board and technical committees.
- 2) Capacity building and training for the members of the advisory board and technical committees.
- 3) Continuous review to ensure that the provisions remain in alignment with the principles of the Public Finance Management and practices.
- 4) Public engagement and transparency regarding the operations and impact of the Equalisation Fund.



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NATIONAL GENDER AND EQUALITY COMMISSION

NGEC/CS, /NAS/VOL.I(18)

14th August 2024

Mr. Samuel Njoroge, CBS
 The Clerk of the National Assembly
 Clerk's Chambers
 Clerk's Chamber Building
 Parliament Building
 P.O. Box 41842-00100
NAIROBI
engc@parliament.go.ke

Dear Mr. Njoroge

**COMMENTS ON THE EQUALISATION FUND (ADMINISTRATION) BILL,
 (SENATE BILL NO. 14 OF 2023)**

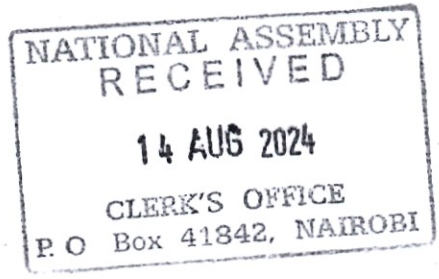
Reference is made to your letter Ref NA/DDC/F&NP/2024/077 requesting the submission of memoranda on the Equalisation Fund (Administration) Bill.

Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 2011 mandates the Commission to; 'monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions';

In line with its mandate, the Commission presents a memoranda analyzing the proposed Bill and making proposals where necessary.

Yours

Purity Ngina, PhD
COMMISSION SECRETARY/ CEO



MEMORANDA: THE EQUALISATION FUND (ADMINISTRATION) BILL NO 14 OF 2023

S/NO	CLAUSE	PROPOSED AMENDMENTS	JUSTIFICATION
1.	<p>Establishment of Equalisation Fund Advisory Board.</p> <p>6. (I) There is established a Board to be known as the Equalisation Fund Advisory Board which shall consist of—</p> <p>(a) the Chairperson who shall be appointed by the Cabinet Secretary;</p> <p>(b) the Principal Secretary responsible for matters relating to finance;</p> <p>(c) the Principal Secretary responsible for matters relating to devolution of a representative designated in writing;</p> <p>(d) one person from a pastoralist community nominated by the National Assembly;</p> <p>(e) one person nominated by the Senate;</p> <p>(f) two persons nominated by the Council of Governors drawn from areas identified as marginalized by the Commission on Revenue Allocation;</p> <p>(g) the Chairperson of the Commission on Revenue</p>	<p>a. Propose to delete Clause 6(1)(d)& (e) and substituting it with the following-;</p> <p>“one woman and one youth” nominated by pastoralists Organisations from the marginalized areas and appointed by the Cabinet Secretary;</p> <p>b. Clause 6(1) (h) to insert the following phrase after the phrase disabilities-;</p>	<p>Nomination by the National Assembly as proposed in (d) appears to be based on balancing appointments between the Senate and National Assembly. However, while the nominee by the senate may be argued to be based on the centrality of the Senate in Equalisation fund, neither legislatures houses should be nominating representatives to the Board. These nominations by Senate and National Assembly interferes with the principle of separation of powers and may ultimately contribute to powers imbalances into the functioning of the Board. The National Assembly and Senate should be left to play their oversight roles.</p>

	<p>designated in writing;</p> <p>(h) one person representing persons with disabilities appointed by the Cabinet Secretary;</p>	<p>“nominated by the Umbrella group of persons with disabilities in the marginalized areas and”</p> <p>Proposal The Bill to provide for the criterion of the nomination of the Person.</p>	<p>The Composition of the board does not factor direct representation of women and youth issues hence the proposed amendment will address this gap.</p> <p>The nominee to be nominated by fellow PWD's.</p> <p>The Bill to be clear on who this nominee is based on the value they will add to the Board.</p>
<p>2.</p>	<p>Vacation of office.</p> <p>8. A member of the Board appointed under section 6(l)(d), (e) and (f) may-</p> <p>(a) resign from office by notice in writing to the Cabinet Secretary;</p> <p>(b) be removed from office by the Cabinet Secretary if the member-</p> <p>(i) has been absent from three consecutive meetings of the Board without permission from the Board;</p> <p>(ii) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;</p> <p>(iii) is convicted of an offense involving dishonesty or fraud;</p> <p>(iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;</p> <p>(v) is incapacitated by prolonged physical or mental illness; or</p> <p>(vi) is otherwise unfit or unable to discharge the functions of the office.</p>	<p>Propose to amend by deleting 8(b)(v) without replacement</p>	<p>The provision is prejudicial and discriminatory to persons with various forms of disabilities.</p> <p>Such a member is to be accorded reasonable accommodation to enable them perform on the same level as the other members</p>

	<p>Secretary</p> <p>10. (1) The Cabinet Secretary shall take into account the recommendations of the Board</p> <p>(2) Where Cabinet Secretary deviates from the recommendations of the Advisory Board, the Cabinet Secretary shall give reasons for the deviation in writing.</p>	<p>Concern by the commission</p> <p>The Commission is concerned on what recourse the Advisory Board has if it is persuaded that the recommendations that it has given are in the best interest of the beneficiaries and the Cabinet Secretary deviates from it.</p> <p>Can it appeal and to which Authority?</p> <p>An alternative proposal is for the law to provide in a new sub-clause (3) the grounds on which the Cabinet Secretary can deviate from such recommendations and which would include-;</p> <p>These are just examples</p> <p>a) The recommendation is not compliant with the Constitution and other existing laws</p> <p>b) Maybe the recommendations are discriminatory</p> <p>c) Maybe insufficiency of available funds.</p>	
<p>4.</p>	<p>Officer administering the Fund</p> <p>13. (1) The Chief Executive Officer of the Board shall be the administrator to the Fund and shall be competitively recruited by the Board.</p> <p>(2) A person is qualified for appointment as a Chief Executive Officer if the person -</p>	<p>Amend by inserting a new Sub-clause 13(4) on vacation of office by the Chief Executive officer as follows-;</p> <p>Vacation of office by Chief Executive Officer</p> <p>The Chief Executive Officer of the Fund shall cease to hold office if--</p>	<p>The proposed Bill has not provided for this clause</p>

	<p>from a university recognized in Kenya;</p> <p>(b) has at least ten years' experience at senior management level in financial management, business administration, economics or law; and</p> <p>(c) meets the requirements of Chapter Six of the Constitution.</p> <p>(3) The Chief Executive Officer shall serve for a term of three years and shall be eligible for re-appointment for a further and final term of three years.</p>	<p>in writing to the appointing authority;</p> <p>(b) he is removed from office by the appointing authority upon being—</p> <p>(i) adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;</p> <p>(ii) convicted of an offense involving dishonesty or fraud;</p> <p>(iii) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;</p> <p>(iv) otherwise unable or unfit to discharge his duties; or</p> <p>(c) he dies.</p>	
<p>5.</p>	<p>Establishment of county technical committees.</p> <p>17. The Board shall, in every eligible county, establish and convene a county technical committee comprising of-</p> <p>(a) the County Commissioner and the Governor who shall be co-chairpersons;</p> <p>(b) the relevant county executive committee member for Finance;</p> <p>(c) Constituency Development Fund Managers;</p> <p>(d) a representative of the relevant County Assembly; and</p>	<p>The Commission notes that the Committee does not comprise Non-State Actors</p> <p>The Commission therefore proposes for the expansion of the Technical Committee to include non-state actors in the same order as proposed in the Advisory Board in Serial No 1 above i.e</p> <p>a. A woman representative b. A person with disabilities c. A youth representative d. A pastoralist or ethnic minorities</p> <p>The appointments to comply with the principle of gender quality</p>	<p>The Beneficiaries of the projects need to be represented and included in the technical Committees for as long as they meet the qualifications.</p>

	respective county government with technical expertise in areas that the prioritized projects fall.	amendment of the sub-clause (e) by substituting the same as follows-: "Officers with technical expertise from departments in the areas that the prioritized projects fall"	very specific because the projects are diverse and a single project officer cannot have technical expertise in all the projects. There is therefore a need for more appropriate technical officers to be nominated through a clear and transparent criterion
6.	Functions of the County Technical Committee 18. The County Technical Committee shall be responsible for approving all projects to be financed from the Fund.	The Commission notes that the provision on the functions of this committee is not comprehensive enough. The provision puts the committee in a place of a mere rubber stamper without any reservations. Can the Committee reject the recommendations or report from the Sub-County Technical Committees? The proposed Bill is also not clear on the working relationship between the Advisory Board, The Secretariat, and the County Technical Committees. Does the County Committee submit its reports to the Board or to the Secretariat?	The provision needs to be clear on the reporting hierarchies
	New proposal by the Commission on funding of the County technical Committees expenses	The Commission proposes that Clause 18 of the Bill be amended to provide for Expenses of the Technical Committees	Clause 18 provides as follows-; 18. The County Technical Committee shall be responsible for approving all projects to be financed from the Fund but the Bill does not provide for the expenses of the meetings
7.	Sub-county technical county technical committee	a. The Commission proposes the inclusion of non-state actors in the same order as in serial 1 and 2 above i.e. to include persons with	For compliance with the principle of inclusion

	<p>county, establish a sub-committee, comprising of-</p> <p>(a) the deputy county commissioner and the sub-county administrator who shall be co-chairpersons;</p> <p>(b) not more than two public officers designated by the county executive committee member with technical expertise in the areas of the prioritized projects;</p> <p>(c) not more than two public officers appointed by the Cabinet Secretary with technical expertise in the areas of the prioritized projects;</p> <p>(d) the chairpersons of the Project Identification and Implementation Committees within the sub-county; and</p> <p>(e) the secretary of the <u>Constituency Development Fund</u>.</p>	<p>women, and youth in the sub-county technical team as per the set down qualifications.</p> <p>The principle of gender equality to be observed in the nominations</p> <p>b. The nomination criteria in clause 19(b) and (c) need to be specific that the officers should be serving at the sub County level</p> <p>c. The Commission proposes that the clause needs to be amended to provide for the funding of the functions of the Sub-County Technical Committee</p>	<p>The Clause is not clear on the criteria of nomination. The proposal by the commission provides specific criteria</p> <p>The Committee will need funds for implementation of its activities and this is not provided for in clause 19</p>
<p>8.</p>	<p>Functions of Project Identification and Implementation Committee.</p> <p>22. The functions of the Project Identification and Implementation Committee shall be to-</p> <p>(a) undertake public participation in beneficiary counties;</p> <p>(b) identify and prioritize project in beneficiary areas in line with guidelines issued by the administrator of the Fund;</p>	<p>Propose to amend 22(a) by inserting the phrase "civic Education and " before the phrase "public"</p> <p>Propose to amend by inserting a new subclause (e) as follows-;</p> <p>(e) involve the locals in the implementation of the projects to the greatest extent in terms of employment and supply of services and goods</p>	<p>The proposal aims at ensuring that apart from benefiting from the projects as a community, the individuals or groups of the locals get the first opportunity to better their livelihoods through the economic empowerment.</p>

funding proposals to sub-county technical committee; and (d) provide oversight on project implementation	
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General Comments

The Bill seeks to elevate provisions of the *PUBLIC FINANCE MANAGEMENT (EQUALIZATION FUND ADMINISTRATION) REGULATIONS, 2021* into a law. However, but in so doing, the Bill falls short of giving a comprehensive legal framework that should inform operations of the funds. If passed, the legal framework of the Bill and the regulatory framework will be similar save for the aspect of administrator of the fund which the Bill vests in the Chief Executive officer of the Board. There is legal guide on the checks and balances on the relationship/intersections and functions of and between the Advisory Board, the county technical Committees, the sub-county technical committee, project identification & implementation committee and the Chief Executive Committee Members.



REPUBLIC OF KENYA
THE NATIONAL TREASURY

SUBMISSIONS ON THE EQUALIZATION FUND (ADMINISTRATION) BILL, 202
(SENATE BILLS NO. 14 OF 2023)

I. Background

1. Article 204 of the Constitution establishes the Equalization Fund (Fund) to provide basic services including water, roads, health facilities and electricity to the marginalized areas to the extent necessary to bring the quality of those services to the level generally enjoyed by the rest of the nation, so far as possible. Article 204 (3) of the Constitution requires the National Government to decide on a policy for the implementation of the Fund either directly or indirectly through conditional or unconditional grants to marginalized counties.
2. Section 18 of the Public Finance Management Act, 2012 mandates the National Treasury, through the Cabinet Secretary to administer the Fund in accordance with Article 204 of the Constitution.
3. The National Treasury therefore, prepared the Equalization Fund Guidelines vide Gazette Notice No. 1711 of 13th March, 2015 for the administration of the Fund. The Guidelines were prepared in strict adherence to the Statutory Instruments Act, 2013 and were approved by Parliament in December, 2015.
4. The First Marginalization Policy (First Policy) determined by the Commission on Revenue Allocation (CRA) in line with Article 216(4) of the Constitution, identified fourteen Counties to benefit from the Fund namely: **Turkana; Manderu; Wajir; Marsabit; Samburu; West Pokot; Tana River; Narok; Kwale; Garissa; Kilifi; Taita Taveta; Isiolo and Lamu.**
5. Consequently, the Equalisation Fund Advisory Board, established under the Guidelines, applied the Equalisation Fund directly using National Government structures to finance and implement projects identified in the 14 marginalized counties.
6. However, during the implementation of the First Policy, the Council of Governors petitioned the High Court vide Petition No. 272 of 2016 seeking to nullify the Guidelines and the court granted the following prayers as sought by the Petitioner: -
 - a) *A declaration that Equalization Fund being for the benefit of Marginalized Counties can only be disbursed by the National Government through the respective and affected County Governments*

and in accordance with recommendations made by the Commission on Revenue Allocation as approved by Parliament.

- b) A declaration that the Guidelines on administration of Equalization Fund published on 13th March, 2015 in the Kenya Gazette Vol CXVII- No. 26 as Gazette Notice No. 1711 are accordingly unconstitutional, null and void for violating Articles 1 (4), 2(1), 6, 10, 174, 201, 204 and 216 of the Constitution and section 12 and 18 of the Public Finance Management Act.
 - c) An order of certiorari to remove and quash the guidelines on administration of Equalization fund published on 13th March 2015 in Gazette Notice No. 1711.
 - d) The 2nd Respondent shall within six (6) months of the date of the judgment, and in consultation with all relevant stakeholders, prepare an appropriate policy and/or statutory instrument on the administration of the Equalization Fund that is compliant with the recommendation made by the Commission on Revenue Allocation as approved by Parliament, and the objectives of the Equalization Fund and devolution as set out in the Constitution and enunciated in the judgment.
7. In its ruling, the Court gave, among others, the following reasons for granting the above prayers: that the Equalisation Fund Advisory Board had ignored recommendation of CRA on: -
- i) Composition on the advisory board;
 - ii) Failure to make provisions for representation of counties;
 - iii) Appropriation of funds as conditional grants to marginalized counties;
 - iv) Funds to be spent when County Governments are in place; and
 - v) Management of the Fund to be supported by an Inter-governmental relations department.
8. Consequently, and in adherence to the directive of the Court, the National Treasury constituted an Inter-Agency Taskforce comprised of officers from the National Treasury, the Office of the Attorney General, the National Assembly, the Senate, Parliamentary Budget Office, Office of the Controller of Budget, the Commission on Revenue Allocation and the Council of Governors to initiate a draft policy and/or Statutory Instrument on administration of the Equalisation Fund.
9. In line with directives of the Court, the taskforce, in consultation with the stakeholders developed the Public Finance Management (Equalisation Fund Administration) Regulations, 2021 which was then published through Kenya Gazette supplement No. 69, Legal Notice No. 54 of 29th April, 2021 and approved by Parliament paving way for the operationalization of the Fund.

II. Current Status

10. With the passage of the EF Administration Regulations 2021;

- a) The National Treasury and Economic Planning constituted the Equalisation Fund Advisory Board (EFAB) and secretariat to provide effective management and administration of the Fund.
- b) Through the Equalisation Fund Appropriation Act, 2018 covering FYs 2014/15, 2015/16 and 2016/17, the Fund initiated full implementation and facilitated completion of **360** projects under the First Marginalization Policy. As at 30th June, 2024, the implementing MDAs reported project implementation was at the following stage:
 - i. **253** projects are 90-100% complete and ready for handover
 - ii. **30** projects between 75% and 89%
 - iii. **23** projects between 50% and 74%
 - iv. **53** projects below 50%
- c) the Commission on Revenue Allocation has developed the Second Marginalization Policy which was approved and published in 2018. The unit of consideration changed from county to sub location consequently classifying **1,424** areas as marginalised spread in **366** wards, **111** constituencies and **34** counties: **Baringo, Bomet Bungoma, Busia, Elgeyo Marakwet, Garissa, Homa-Bay, Isiolo, Kajiado, Kericho, Kilifi, Kisumu, Kitui, Kwale, Laikipia, Lamu, Machakos, Mander, Marsabit, Meru, Migori, Murang'a, Nakuru, Nandi, Narok, Samburu, Siaya, Tana River, Taita Taveta, Tharaka-Nithi, Trans Nzoia, Turkana, Wajir and West Pokot.**
- d) The County Technical Committee and all other committees as stipulated in the Regulations have been established in the **34** beneficiary counties.
- e) The County Technical Committees from **31** Counties: **Baringo, Bungoma, Busia, Elgeyo Marakwet, Homa-Bay, Isiolo, Kajiado, Kilifi, Kisumu, Kitui, Kwale, Laikipia, Lamu, Machakos, Mander, Marsabit, Meru, Migori, Murang'a, Nakuru, Nandi, Narok, Samburu, Siaya, Tana River, Taita Taveta, Tharaka-Nithi, Trans Nzoia, Turkana, Wajir and West Pokot** submitted their project proposals to the Equalisation Fund Advisory Board for approval. The projects were considered and Board resolution communicated to the counties to commence project implementation.
- f) As at 30th June, 2024, **1,247** projects have commenced implementation and are at different stages of implementation.

III. The Equalization Fund (Administration) Bill, 2023 (SENATE BILLS NO. 14 OF 2023)

11. In May, 2023, the National Treasury and Economic Planning received a request from the Clerk of the Senate to attend a meeting of the Committee

on Finance and Budget and submit representations on the Equalization Fund (Administration) Bill 2023 (hereinafter EF Bill 2023).

12. The purpose of the Bill is to:

- a) Provide a framework for administration and management of the Equalization Fund in accordance with article 204 of the Constitution;
- b) Provide for completion of ongoing projects under the First and Second Policies;
- c) Provide a framework for the identification, selection and implementation of projects for purposes of the Fund;
- d) Suspend the application of Article 204 (7) of the Constitution and extend the pendency of the Fund; and
- e) Provide for the procedures in relation to winding up of the Fund.

13. The national Treasury reviewed the EF Bill 2023 and commented as follows:

- a) The EF Bill, 2023 has been overtaken by events since there is already an administrative and management framework in place for the administration of the Fund. Section 18 of the PFM Act, 2012 mandates the National Treasury to administer the Fund. As a result, parliament passed the Public Finance Management (Equalization Fund Administration) Regulations, 2021 which establishes the administrative and management framework in the administration of the Fund. The Regulations were passed after engagement and participation of various stakeholders including the Council of Governors, Commission on Revenue Allocation, Controller of Budget, the Attorney General, the National Assembly, the Senate, Parliamentary Budget Office and the members of the public. Further, Section 6 of the PFM Act, 2012 provides that PFM Act prevails over any legislation on matter, inter alia establishment and management of public funds.
- b) The EF Bill, 2023 does not provide any remedy it tries to cure in the current administrative and governance structure of the management of the Fund. It has adopted the current structure save for moving of the administration of the Fund from the PFM Act to the EF Bill.
- c) We note that the EF Bill, 2023 seeks to extend the Fund for a further non-renewable term of ten years from the time the Fund would have lapsed. Article 204 (6) of the Constitution provides that the Fund would lapse twenty years from the Effective Date. The Constitution defines effective date to mean the date the Constitution came into force. The Constitution was promulgated on 27th August, 2010. Therefore, the Fund would lapse on 26th August, 2030. Though Parliament is mandated to extend the life of the Fund for a further fixed period of years, it would be proper for the same to be done through a stand-alone Bill within a period of twenty-four (24) months to the lapse of the period specified under Article 204 (6) of the Constitution.

14. In Conclusion, the current administration and management framework of the administration of the Fund is sufficient and therefore there is no need for the EF Bill, 2023. The Fund has less than 7 years to lapse and any act of derailment in the administration of the Fund only seeks to affect the achievement of its intended purposes. Furthermore, the Fund is well established under the PFM Act which prevails in the establishment and management of public Funds. Any proposal to ensure better administration and management of the Fund can only be factored under the current legal, governance and administrative framework.
15. However, in the event that Parliament considers enactment of the Bill, the National Treasury recommends various amendments and additions as per the annex attached.



Dr. Chris Kiptoo, CBS
Principal Secretary/The National Treasury

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Equalisation Fund (Administration) Bill, 2023 Proposed Amendments

	Section	Recommendation	Justification
Part 1 - Preliminaries			
1.	Board- means Equalisation Fund Advisory Board	"Board" means the Equalisation Fund Board established under Section 6 .	We recommend establishment of an incorporated Fund Board as opposed an Advisory Board that is unincorporated Fund Board
2.	Section 2 Interpretation	We recommend a new objective under Section 2 to provide definition of "Implementing Agency" "Implementing agency" means the either National or County government entity implementing projects on behalf of the Fund	
3.	Section 3 Purpose of the Act, sub section (b) provide for completion of ongoing projects under the First and Second Policies	Section 3 (b) on the Purpose of the Bill, should be amended to provide as follows; provide for completion of ongoing projects under the First, Second Policies and subsequent Policies.	The CRA is mandated to develop and publish marginalization policies. So far, the CRA has developed 2 policies and reviews and develops policies after three years. Therefore, the Bill should provide for completion of projects in subsequent policies. The Policies should be defined under Section 1.
4.	Section 3 The purpose of this Act is to –	We recommend a new objective under Section 3 to provide for direct and indirect implementation of the Fund	Article 204(3) of the Constitution provides that the national government may use the Equalisation Fund either directly , or indirectly through conditional grants to counties in which marginalised communities exist. The Bill should therefore provide for direct implementation for National government functions or for projects which would be

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			efficiently implemented by the national government: and indirect implementation of devolved function projects or for projects which would be efficiently implemented by the county government
Part III Establishment of Advisory Board			
5.	Section 6	We recommend the establishment of an incorporated Equalisation Fund Board	
6.	Section 6(1g) the Chairperson of the Commission on Revenue Allocation or a representative designated in writing	Delete Section 6(1g) and Section 6(1h) Replace with: 6. (1) There is established a Board to be known as the Equalisation Fund Board which shall consist of— a) the Chairperson who shall be appointed by the President; b) the Principal Secretary responsible for matters relating to finance or a representative designated in writing; c) the Principal Secretary responsible for matters relating to devolution or a representative designated in writing; d) One person from a pastoralist community nominated by the National Assembly e) one person nominated by the Senate; f) One person Nominated by the Council of Governors drawn from areas identified as marginalized by the CRA g) Three people nominated from organizations working in equalization fund beneficiary counties and special	CRA and COB are independent offices which do not play a role in the executive office besides the oversight role over the Fund and could potentially raise conflict of interest in the Board.
7.	Section 6(1h) the Controller of Budget or a representative designated in writing		

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		interest group appointed by the Cabinet Secretary h) the Chief Executive Officer who shall be Secretary of the Board	
8.	Section 8 Appointed under Section 6(1)(d), (e) and (f) shall hold office for a non-renewable term of six years	Section 8 Appointed under Section 6(1)(a) and (d) shall hold office for a term of three years renewable once.	If the Fund is incorporated therefore the common practice for good governance in the public sector is three years renewable once
9.	Section 10 (1) The advisory Board shall- (a) advise and make recommendations to the Cabinet Secretary on the distribution of resources for the provision of the basic services to the marginalized areas under the Article 204 of the Constitution in line with the recommendations of the Commission on Revenue Allocation	Delete	Article 216(4) provides that the CRA shall determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalised areas for purposes of Article 204(2) Article 204(4) The CRA shall be consulted and its recommendations considered before Parliament passes any Bill appropriating money out of the Equalisation Fund. In view of the provisions above the role of providing recommendations on the distribution of resources for provision of basic services to the marginalised areas is mandated to the CRA
10.	Section 10 (1) The advisory Board shall- (c) make recommendations on the priority areas requiring financing and implementation in accordance with the workplans considered under Section (b) and in line with the recommendations of the CRA	Delete	The CRA in Article 204(4) and 216(4) is mandated to identify the marginalized areas and provide recommendations on distribution of resources
11.	Section 10 (1) The advisory Board shall- (e) monitor and evaluate the projects implemented by the County Governments to determine their impact in	Section 10 (1) The Board shall- (e) monitor and evaluate the projects implemented by the National and County Governments to determine their impact in addressing the	The Bill should provide for both direct and indirect implementation of the EF projects.

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	addressing the factors contributing to the marginalization of the areas identified in the counties	factors contributing to the marginalization of the areas identified in the counties	
12.	<p>13. (1) Subject to subsection (2), there shall be paid out of the Fund, expenses of the Advisory Board and such other expenses incurred pursuant to the object and purpose for which the Fund is established.</p> <p>(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual work programmes and budget estimates prepared by the Administrator of the Fund and approved by the Advisory Board and the Cabinet Secretary at the beginning of the financial year to which they relate.</p> <p>(3) The administrative costs and expenses of the Advisory Board shall not exceed three percent of the approved annual allocation to the Fund</p>	<p>13. (1) Subject to subsection (2), there shall be paid out of the Fund, expenses of the Board and such other expenses incurred pursuant to the object and purpose for which the Fund is established.</p> <p>(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual work programmes and budget estimates prepared by the Administrator of the Fund and approved by the Board and the Cabinet Secretary at the beginning of the financial year to which they relate.</p> <p>(3) The administrative costs and expenses of the Board shall not exceed three percent of the approved annual allocation to the Fund</p> <p>(4) The administrative costs and expenses of the implementing agencies shall not exceed two percent of the annual allocation to the county</p>	The Bill should include administrative expenses for the implementing agencies which should not be more than 2% of the annual allocation to the beneficiary county (
13.	<p>Section 14 Officer administering the Fund</p> <p>14(2) A person is qualified for appointment as a Chief Executive Officer if the person -</p> <p>a) has at least a Master's degree from a university recognized in Kenya;</p> <p>b) has at least ten years' experience at a senior management level with skills in health insurance, health financing, financial management, health economics, healthcare, administration,</p>	<p>Section 14 Officer administering the Fund</p> <p>(1) The Chief Executive Officer of the Board shall be the administrator to the Fund and shall be competitively recruited by the Board.</p> <p>(2) A person is qualified for appointment as a Chief Executive Officer if the person -</p> <p>(a) has at least a Master's degree from a university recognized in Kenya;</p> <p>(b) has at least ten years' experience at a senior management level with skills in</p>	The qualification of the CEO to be prescribed in the Human Resource Instrument. Additionally, the Qualification of the CEO are biased to the health sector leaving water, energy and infrastructure which are priority sectors provided in Article 204 of CoK.

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	law or business administration; and	public finance, financial management, administration, business administration (Prescribed in Human Resource Instruments); and (c) meets the requirements of Chapter Six of the Constitution	
14.	Section 14 (3) The Chief Executive Officer shall serve for a term of three years and shall be eligible for re-appointment for a further and final term of three years.	Section 14 (3) The Chief Executive Officer shall serve for a term of five years and shall be eligible for re-appointment for a further and final term of five years.	The Chief Executive Officer shall serve for a term of five years and shall be eligible for re-appointment for a further and final term of five years. This is considering the technicality of the Fund administration and to ensure consistency, good governance and stability for the Fund
15.	15. (1) There shall be a secretariat consisting of – a) the officer administering the Fund; and b) such other public officers as the Cabinet Secretary shall, in consultation with the Advisory Board, designate for the proper performance of the functions of the secretariat under this Act.	15. (1) There shall be a secretariat consisting of – a) administrator of the Fund; and b) such other public officers as the Fund shall, in consultation with the Board, designate for the proper performance of the functions of the secretariat under this Act.	The Board should be incorporated with the mandate to appoint and constitute the secretariat through the Fund while complying with the applicable public employment and Human resource laws in Kenya.
PART IV COUNTY TECHNICAL COMMITTEES			
16. Proposed Amendment Reduce the number of committees to two committee at the county level with representation from the three committees			
17.	Section 19. The County Commissioner of an eligible county shall establish a sub-county technical committee comprising of- (a) the sub-county Commissioner who shall be the Chairperson	Section 19 The County Commissioner of an eligible county shall establish a sub-county technical committee comprising of- (a) the Deputy County Commissioner who shall be the Chairperson	To ensure efficient and effective implementation of the Fund the two committees: County Technical Committee and the Sub-County technical Committee should be responsible for project identification and oversight project implementation at the county level.

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18.	<p>Section 21. The County Commissioner of an eligible county shall establish a Project Identification and Implementation Committee comprising of-</p> <ul style="list-style-type: none"> (a) the Assistant Sub-County Commissioner who shall be the Chairperson; (b) the village administrators of areas defined by the Commission as marginalised; (c) a representative of women, youth and persons with disabilities from marginalised areas; (d) a representative of faith-based groups and non-governmental organisations 	Delete	<p>To ensure efficient and effective implementation of the Fund the two committees: County Technical Committee and the Sub-County technical Committee should be responsible for project identification and oversight project implementation at the county level.</p>
19.	<p>Section 22. The functions of the Project Identification and Implementation Committee shall be to-</p> <ul style="list-style-type: none"> (a) undertake public participation in beneficiary counties; (b) identify and prioritize project in beneficiary areas in line with guidelines issued by the administrator of the Fund; (c) prepare and submit project funding proposals to sub-county technical committee; and (d) provide oversight on project implementation 	Delete	
20.	<p>Section 24 provides that the CEC Member responsible for matters relating to finance shall submit workplans through the respective county technical committee to the Board for approval</p>	<p>Amend the section to provide as follows; 24(1) the CEC Member responsible for matters relating to finance shall submit workplans through the respective county technical committee to the Board for approval</p>	<p>Section 24. provides that he County Executive Committee Member responsible for matters relating to finance shall submit workplans through the respective county technical committee to the Board for approval. Therefore, to ensure efficiency</p>

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		24 (2) upon receipt and approval of the workplan, the Board shall make its recommendation to the Cabinet Secretary	there is no need to submit the workplans to the CS NT for approval after the Board's approval
21.	<p>Section 26. (1) The county executive committee shall, upon approval of a workplan, submit the workplan to the Board.</p> <p>(2) Upon receipt of the workplan, the Board shall –</p> <p>(d) make its recommendations to the Cabinet Secretary</p>	Delete Section 26	



Dr. Chris Kiptoo, CBS
Principal Secretary/The National Treasury

OCOB COMMENTS ON THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023

Section of the Bill	Specific Clause	Proposed Amendment	Justification
Part III – Establishment of Equalization Fund Advisory Board	6(1)(d) (d)-one person nominated from a pastoralist community nominated by the National assembly	<ul style="list-style-type: none"> ▪ Delete 	<p>✓ It's discriminatory, contrary to Article 27 of the constitution of Kenya.</p> <p><i>(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.</i></p> <p><i>(2) Section(g) is enough to take care of (d)</i></p>
Part III – Vacation office	8—iii & iv	<p>iii) is convicted of a criminal offense and or an offense involving dishonesty or fraud and sentenced to imprisonment for a term not exceeding six months.</p> <ul style="list-style-type: none"> ▪ Include (d) Bankruptcy and (e) does not meet the requirements of Chapter 6 of the Constitution). 	<p>✓ Providing a precise mechanism for appointing the Board whilst ensuring transparency and accountability.</p>

OCOB COMMENTS ON THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023

Section of the Bill	Specific Clause	Proposed Amendment	Justification
	<p>12(4) Sub-section (3) shall come into force and be applicable with respect to the financial year in which this Act comes into force and shall not apply with respect to preceding financial years</p>	<p>To delete in its entirety</p>	<p>✓ There shouldn't be an exemption for the 3% capping on the administrative expenses. Even in the absence of the Equalization Fund Act, the Public Finance Management Act (PFMA) applies.</p>
	<p>13(2)(b) A person is qualified for appointment as a Chief Executive Officer if the person has at least ten years' experiencein financial</p>	<p>To add.... or any related field</p>	<p>This will expand the eligibility for appointment in other related academic disciplines.</p>

OCOB COMMENTS ON THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023

Section of the Bill	Specific Clause	Proposed Amendment	Justification
	management, business administration, economics or law.		
	13(4)(a) The Officer administering the Fund shall open a separate account at the Central Bank of Kenya...	To provide for the role of the National Treasury in opening the bank account by including, " <i>The Officer administering the Fund shall, in consultation with the National Treasury, open a separate bank account at the CBK...</i> "	Under Section 18(2) of the Public Finance Management Act (PFMA), the National Treasury is responsible for ensuring that the Equalization Fund account is at the Central Bank of Kenya. The proposed amendment, therefore, aligns Clause 13(4)(a) of the Bill with Section 18(2) of the PFMA, which provides that " <i>the National Treasury shall keep the Equalization Fund in a separate account maintained at the Central Bank of Kenya.</i> "
	13(4)(b) The Officer administering the Fund shall open and maintain the bank	To delete " <i>in a manner prescribed by the National Treasury from time to time</i> " and replace with " <i>in accordance with this Act.</i> "	The Equalization Fund is an independent Fund not under the National Treasury's control. The court affirmed this in the case of <i>Council of Governors v Attorney General & Others Petition 271 of 2016</i> when it annulled

OCOB COMMENTS ON THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023

Section of the Bill	Specific Clause	Proposed Amendment	Justification
	<p>account in (a) in the manner prescribed by the National Treasury from time to time.</p>		<p>the 2015 guidelines on the administration of the Equalization Fund. In particular, the Court noted in paragraph 136 of the judgment that “The role of the National government under Article 204 of the Constitution as read together with section 18 of the PFMA is limited to the operational aspects of establishment and maintenance of an account for the Equalization Fund...<i>These provisions do not give the national government any powers in relation to the decisions and manner of expenditure of the monies in that account.</i>”</p> <p>Consequently, providing that the officer administering the Fund shall maintain the bank account in a manner prescribed by the National Treasury goes against the spirit of the Constitution as reinforced by the said court decision.</p>

OCOB COMMENTS ON THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023

Section of the Bill	Specific Clause	Proposed Amendment	Justification
Part IV - Commission	23(1)(a) The County Executive Committee Member shall consolidate all projects... <i>and submit to the Secretary of the Board...with a copy to the Commission</i>	<ul style="list-style-type: none"> ✓ To provide under Clause 15(1) (a) that the Officer administering the Fund shall be the secretary to the Board. ✓ To define under Clause 2 that the “Commission” means the Commission on Revenue Allocation. 	<ul style="list-style-type: none"> ✓ To provide clarity on who the Secretary to the Board is. ✓ To provide clarity on what Commission is referred to
	26(2)(d) (2) Upon receipt of the work plan, the Board shall- (d) make its recommendations to the Cabinet Secretary	To delete sub-section 2(d) in its entirety	In line with Petition 271 of 2016 quoted earlier, it is the Advisory Board and not the Cabinet Secretary that should make the decisions regarding the projects to be undertaken by the Equalization Fund.

OCOB COMMENTS ON THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023

Section of the Bill	Specific Clause	Proposed Amendment	Justification
	<p>28(1)(a)</p> <p>The County Executive Committee member shall prepare and submit to the Advisor Board...</p>	<p>Add “y” to complete the word Advisory.</p>	<p>To correct a typing oversight.</p>
	<p>28 & 29</p>	<p>Choose and stick to either the officer administering the fund or the fund administrator.</p>	<p>This will ensure clarity on the correct term to use.</p>

OCOB COMMENTS ON THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023

Section of the Bill	Specific Clause	Proposed Amendment	Justification
	<p>29</p> <p>Withdrawal of funds</p>	<p>To provide for a two-tier withdrawal process as follows:</p> <p>a) Withdrawal from the Consolidated Fund to the Equalisation Fund whereby the National Treasury makes the requisition to the Controller of Budget.</p> <p>b) Withdrawal from the Equalisation Fund to the Counties Spending account whereby the Officer administering the Fund shall make the requisition to the Controller of Budget (Currently Clause 29(3))</p>	<p>✓ Article 204(1) provides that an Equalisation Fund shall be paid half a percent of all revenue the national government collects. According to Article 206, the Consolidated Fund is the first entry point of all money raised or received by or on behalf of the national government. Hence, in the first tier, the National Treasury shall make the requisition for withdrawing money to the Controller of Budget to allow the movement of the money into the Equalisation Fund.</p> <p>✓ Thereafter, the administrator of the Fund shall make a requisition to the</p>

OCOB COMMENTS ON THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023

Section of the Bill	Specific Clause	Proposed Amendment	Justification
		<p>✓ The Controller of Budget shall develop guidelines for withdrawal of funds from the Equalisation Fund</p>	<p>✓ COB for withdrawal of funds out of the Equalisation Fund. ✓ Article 228 of the Constitution requires the Controller of Budget to be satisfied that the withdrawal is in line with the law. The guidelines will assist the Controller of Budget in ensuring they get assurance and satisfaction that the withdrawal is authorised by law.</p>
	<p>29(2) & (3)</p> <p>The officer administering the Fund shall make a requisition to withdraw money from the Equalisation Fund.</p>	<p>These clauses contradict section 18(3) & (4) of the PFMA, which provides that the National Treasury shall make a requisition to withdraw funds from the Equalisation Fund.</p> <p>Thus, consequential amendments should be made to the PFMA.</p>	<p>According to the court judgment referred to, and in the spirit of the Constitution, the Equalisation Fund is autonomous from the National Treasury. The National Treasury only comes in at the first instance during the withdrawal from the Consolidated Fund; after that, the officer administering the Equalisation Fund takes over.</p> <p>Therefore, the PFMA must be amended to conform to the Bill, which aligns with the spirit of the law.</p>

OCOB COMMENTS ON THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023

Section of the Bill	Specific Clause	Proposed Amendment	Justification
	29(4) All withdrawals made from the Fund under subsection (1) shall be deposited into the respective spending agencies' accounts.	To include " <i>respective counties spending agencies account.</i> "	To remove any ambiguity. The spending agency account is not defined. The fund should be utilized in the counties; hence, specificity is needed.
Part V	31 Reports to the Advisory board	Create a section on M&E and Reporting and give it a strong position in the Bill	<ul style="list-style-type: none"> ▪ This will ensure proper accountability for the implementation of the programs

OCOB COMMENTS ON THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023

Section of the Bill	Specific Clause	Proposed Amendment	Justification
	<p>31(b) The Cabinet Secretary shall-</p> <p>(i) Make the necessary requisitions to transfer monies to the county governments to complete projects.</p>	<p>To delete “Cabinet Secretary” and replace it with “National Treasury.”</p> <p>Clause (i) & (ii) replace “County governments” with the “Equalisation Fund.”</p>	<p>The National Treasury, not the Cabinet Secretary, is responsible for ensuring that the Equalisation Fund is funded according to the Constitution.</p> <p>Under Clause (i), the responsibility of the National Treasury is to make requisition for the transfer of funds into the <i>Equalisation Fund</i> and not the transfer of funds to the</p>
	<p>(ii) ensure that monies required for the completion of projects have been transferred to the respective county governments</p>		<p>County governments, since that is the purview of the fund administrator.</p> <p>Similarly, under clause (ii), the National Treasury shall ensure that monies required for project completion are transferred to the Equalisation Fund, not the respective county governments.</p>

OCOB COMMENTS ON THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023

Section of the Bill	Specific Clause	Proposed Amendment	Justification
	32-(2) Suspension under Article 204(8)	The fund shall remain in force for a further non-renewable term of 10 years from the date upon which the fund would have lapsed under Article 204(6) ----delete	<ul style="list-style-type: none"> ▪ The law already provides mechanisms for enhancing the fund's life. <i>(7) Parliament may enact legislation suspending the effect of clause (6) for a further fixed period of years, subject to clause (8).</i> <i>(8) Legislation under clause (7) shall be supported by more than half of the National Assembly members and more than half of all the county delegates in the Senate.</i>

OCOB COMMENTS ON THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023

Other general comments

1. **Independent Evaluation Mechanisms:** The bill should include mechanisms for the independent evaluation of project outcomes to ensure accountability and transparency.
2. **Division of Responsibilities:** In implementing projects, there needs to be a clear division of responsibilities between national (Advisory Board) and county governments.
3. **Alignment with County Integrated Development Plans:** The bill must ensure all projects align with County Integrated Development Plans (CIDPs).
4. **Dispute and Complaint Handling Procedures:** The bill should establish clear procedures for handling disputes or complaints about managing the Fund or implementing projects.
5. **Annual reporting:** The Bill only makes provision for quarterly reporting under Clause 27. It is proposed that the Bill should make provision for annual reporting which should include reporting on the administration expenses of the Board so that an oversight institution can monitor compliance with the ceiling on administration expenses.



FCPA Dr. Margaret Nyakang'o, CBS
CONTROLLER OF BUDGET

OCOB - George Neri
COY - Walelwa
LSK - Walelwa
CRA - Malima
EF - Walelwa



COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE EQUALISATION FUND (ADMINISTRATION) BILL, (SENATE BILLS NO. 14 OF 2023)

TO

THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

FROM

THE COUNCIL OF GOVERNORS



COUNCIL OF GOVERNORS

THE COUNCIL OF GOVERNORS,

In recognition of the fact that sovereign power of the state is exercised at two levels of government, that is, the National Government and the County Governments, whose distinctness is recognized by Article 6 (2);

In further recognition of the need to ensure that all legislation is cognizant of devolved governments; and

Aware of the need for coordinated action between the National and County Governments to ensure that legislation properly respond to the key issues, and further reflects the spirit and purpose of devolution.

Having reviewed the Equalisation Fund (Administration) Bill, 2023, the Council of Governors on behalf of the 47 County Governments submits the proposals highlighted herein below for consideration:

A. GENERAL COMMENTS

1. The Council supports the purposes of the Bill, among them, the extension of pendency of the fund to ensure that the Fund achieves its intended objectives.
2. It is important to note that after 14 years of its existence, the Fund is yet to realize the objectives for which it was established in 2010. Since inception of the Fund, the total entitlement to Counties is Kshs.62,403,758,050, out of which only Kshs.12.4 billion has been disbursed despite Ksh.26,293,791.644 being appropriated by Parliament so far. The slow uptake negates the objectives of establishing the Fund as we draw close to its sunset.

The Council therefore requests the National Assembly to fast track the approval and subsequent appropriation of the remaining amount of the Fund entitled to the eligible County governments.



COUNCIL OF GOVERNORS

3. The National Assembly should also cause the preparation of a payment plan of the outstanding entitlement by the National Treasury.
4. There is need for harmonization of public participation under the Bill to avoid duplication and waste of public resources. The Bill requires public participation on the projects to be undertaken by the Board, the Project Identification and Implementation Committee and the County Executive Committee Member for Finance. It is also not clear in the Bill how the cost of public participation will be apportioned among the three and the source of funding for the exercise.

B. SPECIFIC CONCERNS

The Council proposes the following specific amendment to the Equalisation Fund (Administration) Bill, 2023:

Clause/Section	Provision	CoG's Proposal	Rationale/Justification
PART III – ESTABLISHMENT OF ADVISORY BOARD	6. (1) There is established a Board to be known as the Equalisation Fund Advisory Board which shall consist of— (a) the Chairperson who shall be appointed by the Cabinet Secretary; (b) the Principal Secretary	Amend Section 6 (1)(f) to read as follows: (f) three persons nominated by the Council of Governors drawn from an eligible county identified as a beneficiary of the Fund by the Commission on Revenue Allocation;	From the provision in the Bill there is lack of adequate representation of the county governments on the Equalization Fund Advisory Board vis-à-vis the national government representation, despite the services catered for by the Fund being mostly functions of the county governments



COUNCIL OF GOVERNORS

	<p>responsible for matters relating to finance;</p> <p>(c) the Principal Secretary responsible for matters relating to devolution or a representative designated in writing;</p> <p>(d) one person from a pastoralist community nominated by the National Assembly;</p> <p>(e) one person nominated by the Senate;</p> <p>(f) Two persons nominated by the Council of Governors drawn from areas identified as marginalized by the Commission on Revenue Allocation;</p> <p>(g) the Chairperson of the Commission on Revenue Allocation or a representative designated in writing;</p> <p>(h) one person representing</p>		<p>as per the Fourth Schedule to the Constitution.</p> <p>Given that implementation will take place in marginalized areas identified within Counties, there is need for adequate representation of the devolved units. This would bolster the county government's engagement in the administration of the Fund and its associated services.</p>
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COUNCIL OF GOVERNORS

	<p>persons with disabilities appointed by the cabinet secretary; (i) the Chief Executive Officer who shall be secretary of the Board.</p>		
<p>PART IV – COUNTY TECHNICAL COMMITTEES</p> <p>Clauses 22 (a), 25 (2)(b)</p>	<p>Project Public Participation</p>	<p>The Sections on Public Participation to be harmonized with provisions of Section 9 (1)(j).</p>	<p>Section 9 (1)(j) of the Bill already assigns the responsibility of conducting public participation on the projects to the Board. The provisions for public participation under Sections 9(1)(j), 22 (a) and 25 (2)(b) are duplicitous and could lead to wastage of public resources if not harmonized.</p> <p>The Bill should also provide for budgeting and allocation of funds for purposes of conducting public participation if it is not catered for by the administration cost.</p>



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MEMORANDUM
TO
THE CLERK OF THE NATIONAL ASSEMBLY

ON
THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023

AUGUST, 2024

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Introduction

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- President, Faith Mony Odhiambo
- Vice President, Mwaura Kabata
- General Membership Representatives, Tom K'opere, Teresia Wavinya, Hosea Manwa
- Nairobi Representatives, Gloria Kimani, Irene Otto, Stephen Mbugua
- Up-country Representatives, Vincent Githaiga, Lindah Kiome, Hezekiah Aceso, Zulfa Roble
- Coast Representative, Elizabeth Wanjeri
- Secretary/CEO, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Kenya. Pursuant to the statutory mandate, the Law Society of Kenya makes presentations on the Equalisation Fund (Administration) Bill, 2023.

GENERAL COMMENTS

The Equalisation Fund (Administration) Bill, 2023 has been proposed to provide for a framework for administration and management of the Equalisation Fund in accordance with Article 204 of the Constitution. Article 204 (1) of the Constitution provide that there is established an Equalisation Fund into which shall be paid one half per cent of all the revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly. Further, that the national government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.

Faith Odhiambo (President), Mwaura Kabata (Vice-President)
Tom K'opere, Teresia Wavinya, Hosea Manwa, (General Membership Representatives)
Gloria Kimani, Irene Otto, Stephen Mbugua (Nairobi Representatives)
Vincent Githaiga, Lindah Kiome, Hezekiah Aceso, Zulfa Roble (Upcountry Representatives)
Elizabeth Wanjeri (Coast Representative)

Equalization Funds for comparable regional economic outcomes

Equalization payments are transfer payments made by a government to offset financial differences between different parts of the country. Equalization payments help create comparable economic outcomes, but they can also subsidize fiscal profligacy by regional governments.

It is the tributary for equalization payment which is a transfer payment made to a county, from the national treasury for the purpose of offsetting monetary imbalances between different counties. Equalization fund represent wealth or income redistribution between regions and counties. Equalization funds may help equalize economic outcomes across counties, but they also tend to subsidize or bail out fiscally irresponsible county governments thus creating significant moral hazard.

In many jurisdictions, there is a vast diversity between national and regional governments in terms of the quality of economic institutions, government taxing and spending policies, natural resource endowments, labour force characteristics, etc., that result in different economic outcomes such as availability of employment, economic development, personal incomes, and regional tax bases. In order to equalize these economic outcomes, higher level governments can impose wealth and income transfers that take from richer parts of the country and transfer to poorer areas.

Structurally, this is realised through the established of Equalization Fund framework. Since equality and equitable distribution of resources is a constitutional imperative, the Law Society of Kenya supports this legislative initiative that engenders offsetting economic imbalances.

SPECIFIC COMMENTS

NO.	Provision of the Bill	Issue	Proposal	Justification
1.	3(d)	This clause provides that <i>“The Purpose of this Act is to suspend the application of Article 204(7) of the Constitution and extend the pendency of the Fund;”</i>	That the clause should state the exact no. of years for which the suspension is effective.	Article 204(7) donates powers to Parliament to suspend Article 204(6) through legislation for a fixed period of time.

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		This suspension seems indefinite.		
2.	Clause 6 (1) (i)	There is established a Board to be known as the Equalisation Fund Advisory Board which shall consist of <i>“the Chief Executive Officer who shall be secretary of the Board.”</i>	We propose that the clause specifies the which CEO is being referred to i.e the CEO of the Fund.	The framing of the clause is ambiguous since section 2 of the act does not define the term Chief Executive Officer.
		Gender composition	Introduce Clause 6(4) to read; “The composition of the board shall at all times comply with gender rule contemplated in Article 27(8) of the Constitution”	Gender equality is a guiding principle in our constitutional dispensation post 2010. Article 27 (8) specifically states that “in addition to the measures contemplated in clause (6), the state shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.”
3.	17(d)and(f) which provides that “Each county commissioner of an eligible county shall establish and convene a county technical	Both clauses provide for the same thing.	Maintain one provision.	To eliminate duplication of roles.

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Elizabeth Wanjeri (Coast Representative)

Committee comprising of a representative of the relevant County Assembly"			
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In conclusion, we humbly submit that our comments be considered before enacting the Bill.

Yours faithfully,



Faith Mony Odhiambo
President Law Society of Kenya

Faith Odhiambo (President), Mwaura Kabata (Vice-President)
Tom K'opere, Teresia Wavinya, Hosea Manwa, (General Membership Representatives)
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NAIROBI

COMMISSION ON REVENUE ALLOCATION

REF: CRA/ADM/02 VOLIII (86)

DATE: 14th August 2024

Mr. Samuel Njoroge
Clerk of the National Assembly
Main Parliament Buildings
P.O. Box 41842-00100
NAIROBI.

Dear *Mr. Njoroge,*

**SUBMISSIONS ON THE EQUALISATION FUND (ADMINISTRATION)
BILL, 2023 (SENATE BILLS NO. 14 OF 2023)**

Reference is made to your letter Ref No. NA/DDC/F&NP/2024/077 dated 5th August, 2024 requesting the Commission to make submissions on the Equalisation Fund (Administration) Bill 2023 and also appear before the Departmental Committee on Finance and National Planning on Thursday, 15th August 2024 at 4.30 pm.

The Commission has reviewed the Bill and makes its submissions attached herein for your consideration. The Commission also confirms its participation in the meeting of Thursday 15th August, 2024.

Yours *Sincerely,*

James Katulé
CPA James Katulé
COMMISSION SECRETARY/CEO

Encl.



Promoting an Equitable
Society

MEMORANDUM ON THE EQUALISATION FUND (Administration) BILL 2023

The Commission has considered the provisions of the **Equalisation Fund (Administration) Bill, 2023** and submits the following observations for your consideration:

No.	Clause	Recommendation	Justification
1.	Part I: Preliminaries Section 2:	Define “ the Commission ” as the Commission on Revenue Allocation.	For clarity
2	Part II: The Equalisation Fund Section 4:	fund consisting of one half of all revenue , the correct reference is one half percent .	To align with Article 204(1) of the Constitution
Part III: Establishment of Advisory Board			
3	Section 6(2)	Delete (1) (d), (e), and (f). Replace with (1) (a) (d), (e), (f) and (h)	All persons appointed under the said sub clauses should be gazetted.
4	Section 6(3)	Delete (1) (d), (e), and (f). Replace with (1) (a) (d), (e), (f) and (h)	The tenure of office apply to all persons appointed under the said sub clauses
5	Section 7:	Delete (1) (d), (e), and (f). Replace with (1) (a) (d), (e), (f) and (h)	The qualification for appointment apply to all persons appointed under the said sub clauses
6	Section 8	Delete (1) (d), (e), and (f). Replace with (1) (a) (d), (e), (f) and (h)	The vacation of office apply to all persons appointed under the said sub clauses
7	Section 15(2)(d)	Delete “Guidelines”. Replace with “ Bill ”	editorial
	Section 15(2)(f)(i)	Delete “have been”	editorial

8	Part IV: County Technical Committees		
9	Section 16 (a)	Delete "sanitation"	To align with Article 204(2)
10	Section 17 (a)	Delete " Governor ". Replace with County Administrator	This is a technical committee. The Governor should be represented by the County Administrator
11	Section 20 (c)	Delete " access ". Replace with "assess"	editorial
12	Section 25	This section should come before Section 24	It is after the county executive committee member has prepared a work plan that it can be submitted
13	Section 25 (1)	Delete Section 24 . Replace with Section 22	To align to the correct clause

End