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AMASON J. KINGI

THE SENATE

*20/7/23*

STANDING COMMITTEE ON FINANCE AND BUDGET

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

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CLERK AT THE TABLE	<i>Chania</i>

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APPROVED  
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## **LIST OF ABBREVIATIONS/ACRONYMS**

CEC	-	County Executive Committee
CoG	-	Council of Governors
CRA	-	Commission on Revenue Allocation
NGEC	-	National Gender and Equality Commission
PFMA	-	Public Finance Management Act

**PREFACE**  
**ESTABLISHMENT AND MANDATE OF THE COMMITTEE**

Article 124 (1) of the Constitution of Kenya provides that each House of Parliament may establish committees and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.

Parliamentary committees consider policy issues, scrutinize the workings and expenditures of the National and County Governments, and examine proposals for legislation. The end result of any process in Committees is a report, which is tabled in the House for consideration.

The Senate Standing Committee on Finance and Budget is established under Section 8(1) of the Public Finance Management (PFM) Act, 2012 and standing order 228 of the Senate Standing Orders and is mandated to-

- a) investigate, inquire into, and report on all matters relating to coordination, control, and monitoring of the county budgets and examine -
  - i. the Budget Policy Statement presented to the Senate;
  - ii. the report on the budget allocated to constitutional Commissions and independent offices;
  - iii. the Division of Revenue Bill, the County Allocation of Revenue Bill, the County Governments Additional Allocations Bill, and the cash disbursement schedules for county governments;
  - iv. all matters related to resolutions and Bills for appropriations, the share of national revenue amongst the counties, matters concerning the national budget, including public finance and monetary policies and public debt, planning, and development policy; and
- b) Pursuant to Article 228 (6) of the Constitution, to examine the report of the Controller of Budget on the implementation of the budgets of county governments.

## MEMBERSHIP OF THE COMMITTEE

Following the constitution of the Standing Committees of the Senate of the Thirteenth (13<sup>th</sup>) Parliament on Thursday, 13<sup>th</sup> October, 2022, the Senate Standing Committee on Finance and Budget as currently constituted comprises the following Members-

- |   |   |                         |
|---|---|-------------------------|
| 1) Sen. (Capt.) Ali Ibrahim Roba, EGH, MP | - | <b>Chairperson</b>      |
| 2) Sen. Maureen Tabitha Mutinda, MP       | - | <b>Vice-Chairperson</b> |
| 3) Sen. (Dr.) Boni Khalwale, CBS, MP      | - | Member                  |
| 4) Sen. Joyce Chepkoech Korir, MP         | - | Member                  |
| 5) Sen. Tabitha Karanja Keroche, MP       | - | Member                  |
| 6) Sen. Mohamed Faki Mwinyihaji, MP       | - | Member                  |
| 7) Sen. Richard Momoima Onyonka, MP       | - | Member                  |
| 8) Sen. Shakila Abdalla Mohamed, MP       | - | Member                  |
| 9) Sen. Eddy Gicheru Oketch, MP           | - | Member                  |

## **CHAIRPERSON'S FOREWORD**

The Equalisation Fund (Administration) Bill, 2023 (Senate Bills No. 14 of 2023) was published via Kenya Gazette Supplement No. 44 of 12<sup>th</sup> April, 2023 and read a First Time in the Senate at its sitting held on Thursday, 4<sup>th</sup> May, 2023. Thereafter, pursuant to standing order 145 of the Senate Standing Orders, the Bill was committed to the Standing Committee on Finance and Budget for consideration.

The Bill proposes to establish administrative structures for the management of the Equalisation Fund. This will ensure effective and efficient mechanisms are in place for smooth implementation or utilisation of the fund.

The Equalisation Fund is established under Article 204 of the Constitution. Article 204(1) of the Constitution provides that in each financial year, there shall be paid into the Fund at least one-half percent of all revenue collected and calculated on the basis of the most recent audited accounts approved by the National Assembly.

The Fund may only be used to provide basic services such as water, roads, health facilities, and electricity to marginalised areas to the extent necessary to bring, so far as is possible, the quality of those services to the level generally enjoyed by the rest of the nation.

It is worth noting that the High Court, in the case Petition No. 272 of 2016, declared the 2015 Guidelines on administration of the Fund as unconstitutional. This was based on the argument that the 2015 Guidelines had not provided for the role of county governments in the management of the Fund and the implementation of projects under the Fund, yet counties are the units of expenditure of the Equalisation Fund. However, later, through a multi-agency effort, the Public Finance Management (Equalization Fund Administration) Regulations, 2021 were developed and approved by Parliament. Since 2021, the Fund has been administered by a Board established pursuant to Regulation 4(1) of the Public Finance Management (Equalization Fund Administration) Regulations, 2021.

The Equalisation Fund (Administration) Bill, 2023, mirrors the existing Public Finance Management (Equalization Fund Administration) Regulations, 2021, and proposes to the establishment of an Equalisation Fund Advisory Board comprising of a Chairperson appointed by the Cabinet Secretary for the National Treasury, the Principal Secretaries for Finance and Devolution, a representative of pastoralist communities nominated by the National Assembly, a representative nominated by the Senate, the Controller of Budget, one person nominated by Council of Governors and a representative of the Commission on Revenue Allocation (CRA).

The Bill obligates the Board to, inter alia-

- a) Appraise and evaluate projects proposed under the workplans.
- b) Make recommendations on the priority areas requiring financing and implementation in accordance with the workplans.
- c) Oversee, in consultation with the County Governments, the implementation of the projects to ensure compliance with the Constitution.
- d) Monitor and evaluate projects implemented by the beneficiary county governments.

The Chief Executive Committee (CEC) Member responsible for Finance in a beneficiary county is required to prepare and submit a report to the Board setting out the implementation status of projects financed by the Fund.

The Bill proposes that each county shall establish a County Technical Committee which shall be responsible for approving all projects financed by the Fund. Further, the sub-county technical committee whose functions shall be to evaluate and prioritize development proposals and prepare quarterly reports on funds received and project implementation status for submission to county technical Committee. The project identification and implementation committee will identify and prioritize projects in beneficiary counties, prepare and submit proposal to sub-county technical committee and provide oversight on project implementation.

Considering the delays that have taken place in operationalization and disbursement from the Fund and that the last appropriation Bill for the release of funds was made in 2018, the Bill proposes that, pursuant to Article 204(7) of the Constitution, the term of the Fund be extended by a further fixed period of ten (10) years.

During consideration of the Bill, the Committee, pursuant to Article 118 of the Constitution and standing order 145 of the Senate Standing Orders, invited members of the public to submit views on the Bill. Further, the Committee held consultative meetings with key stakeholders. The submissions by the following institutions are attached in this report-

- a) The National Treasury and Economic Planning;
- b) The Council of Governors (CoG);
- c) The Commission on Revenue Allocation (CRA); and
- d) The National Gender and Equality Commission (NGEC)

### **Committee Observations**

Having considered the Bill and submissions from the stakeholders, the Committee made several observations, including -

- a) Given that the project implementation will take place in marginalised areas identified within Counties, the representation of the county governments on the Equalization Fund Advisory Board and technical committees was inadequate compared with the national government representation. Therefore, there was need for adequate representation of county governments through the Council of Governors. This would boost the county government's engagement in the administration of the Fund.
- b) The Commission on Revenue Allocation should provide a clear definition of the term “marginalised areas” in development of the Third policy on marginalisation.

- c) The Bill should be explicit on the flow of funds. Therefore, beneficiary counties shall open special purpose accounts at the Central Bank of Kenya into which appropriated and allocated funds shall be transferred.
- d) To ensure efficient utilisation and seamless implementation of the Fund, the Equalisation Fund should only be utilised indirectly as conditional grants to Counties.
- e) The Bill had not provided for conduct of meetings of the Board, thus the bill should provide for meetings of the Board; frequency of meetings, notice of meetings, quorum of conduct of business, chairperson of the meetings, voting, procedure for meetings and attendance of other persons to Board meetings.
- f) The Advisory Board should establish all the technical committees as opposed to it being done by the County Commissioner.

#### **Committee Recommendation**

The Committee having considered the Bill recommends that the Senate approves the Bill with amendments.

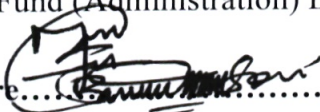
## ACKNOWLEDGEMENT

I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which made the consideration of the Equalisation Fund (Administration) Bill, 2023

Appreciation to the offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this important assignment.

Lastly, I thank the stakeholders who submitted written memoranda and who appeared before the Committee to present their comments on the Bill.

It is now my pleasant duty, pursuant to standing order 148 (1) of the Senate Standing Orders, to present the Report of the Standing Committee on Finance and Budget on Equalisation Fund (Administration) Bill, 2023

Signature..........Date.....18/07/2023.....

**SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP,**

**CHAIRPERSON,**

**STANDING COMMITTEE ON FINANCE AND BUDGET**

## **CHAPTER ONE**

### **OVERVIEW OF THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023**

#### **1.1 Background**

1. The Equalisation Fund (Administration) Bill, 2023 (Senate Bills No.14 of 2023) was published via Kenya Gazette Supplement No.44 of 12<sup>th</sup> April, 2023 and read for First Time in the Senate at its sitting held on Thursday, 4<sup>th</sup> May, 2023.

#### **1.2 Contents of the Equalisation Fund (Administration) Bill, 2023**

2. Article 204 (1) of the Constitution establishes the Equalisation Fund whose purpose is to finance the provision of certain services in order to bring the quality of these services in marginalised areas to the level generally enjoyed by the rest of the country. The primary object of this Bill is therefore 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 identified, financed and implemented..
3. The Fund is set up to provide basic services, including water, roads, health facilities, and electricity, to the marginalised 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.
4. The Bill seeks to establish a Board to be known as the Equalization Fund Advisory Board. The Board shall consist of the-
  - a) Chairperson nominated by the Cabinet Secretary of the National Treasury,
  - b) Principal Secretary responsible for matters relating to finance,
  - c) Principal Secretary responsible for matters relating to devolution,
  - 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 marginalised by the Commission on Revenue Allocation,
  - g) Chairperson of the Commission on Revenue,
  - h) Controller of Budget, and a Chief Executive Officer who shall be secretary of the Board and the administrator of the Fund.
5. The Bill seeks to extend the term of the Fund by a fixed period of 10 years in accordance with Article 204(7) of the Constitution. The term of the Fund was set at twenty years. Cognizant of the fact that the period contemplated under Article 204(7) expires in the next seven (7) years, and that the Fund is yet to achieve its intended purpose, it is critical to extend the time limit for the Fund in order to ensure the purpose of the Fund is met.
  6. The Bill provides for qualifications for appointment to the Equalization Fund Advisory Board, tenure of office, vacation of office, and the functions of the Board. The Bill also provides that the Board shall form committees necessary to ensure effective performance of its functions. The administrative expenses of the Board shall be paid out of the fund, and shall not exceed three percent of the allocation annually.
  7. Additionally, the Bill provides for establishment and functions of a secretariat headed by the administrator of the fund, and other public officers the Cabinet Secretary shall appoint in consultation with the Advisory Board.
  8. The Bill provides for establishment, composition and functions of County Technical Committees, Sub-county Technical Committees and Project Identification and Implementation Committees by beneficiary counties.
  9. The Bill obligates the County Executive Committee (CEC) Member responsible for matters relating to finance to submit work plans through the respective county technical committee to the Board for approval. The CEC Member will also prepare quarterly and annual reports on funds received and implementation status of projects funded by the Equalisation Fund and submit the same to the Board, Commission of Revenue Allocation and Controller of Budget.

10. The Bill provides that the administrator of the Fund shall open a designated Equalization Fund account at the Central Bank of Kenya. Withdrawal from the Fund is authorised under an Act of Parliament that approves the appropriation of money, and the officer administering the Fund shall make a requisition for the withdrawal and submit it to the Controller of Budget for authorization.
11. Additionally, the Bill also provides that unutilized balances in the Equalization Fund shall not lapse at the end of the financial year but shall be retained for use for the purpose for which the Fund is established. further, the accounts of the Fund shall be audited and reported upon in accordance with the Public Finance Management Act and the Public Audit Act.
12. The Bill requires the Advisory Board to prepare a status report on all existing pending projects and their funding requirements in line with the submitted work plans, and the Cabinet Secretary responsible for matters relating to Finance shall make the necessary requisition for the transfer of monies to the county governments for the completion of the projects, and ensure that monies required for the completion of the projects have been transferred to the respective county governments.
13. The Advisory Board shall prepare the winding up report of the Fund not later than three months from the period specified under Article 204(6) of the Constitution or in legislation enacted by Parliament pursuant to Article 204(7) of the Constitution for approval by the Cabinet Secretary. The CS shall submit the report to the National Assembly and the Senate within fourteen days of the receipt of the report.
14. The Bill repeals the Public Finance Management (Equalization Fund Administration) Regulations, 2021, and provides for the transitional procedures. In this regard, any ongoing projects under the repealed Regulations shall be finalised in accordance with the provisions of this Act, and a person who immediately before the commencement of this Act was an officer or employee of the Advisory Board shall be deemed to be a member of staff of the Board for the unexpired period of that person's tenure.

## CHAPTER TWO

### OVERVIEW OF PUBLIC PARTICIPATION ON THE BILL

#### 2.1 Submissions by Stakeholders

15. The Chapter entails submissions from various stakeholders regarding the Bill. These include-

- a) Commission on Revenue Allocation;
- b) The Council of Governor;
- c) The National Treasury; and
- d) National Gender and Equality Commission.

#### 2.2 Commission on Revenue Allocation

16. The representatives from Commission presented the following specific proposals and recommendations on the Bill-

- a) Clause 2 on interpretation-
  - i. Add the definition of the phrases, “First policy”, “unutilized balance”, and “revenue” in their alphabetical sequences to align with the Constitution.
  - ii. Revenue should be defined as in Article 204(1) which refers to all revenue collected by the national government each year.
- b) Sub-Clause 3(b) -purpose of the Bill- be amended by adding the words “and all other subsequent policies determined by the Commission on Revenue Allocation for purposes of Article 204(2)” to cater for all other future policies.
- c) Sub-clause 3(d) be deleted since the Fund is yet to be fully operationalized, and that the Fund does not lapse at the end of the FY. Consequently, Clause 32 which extends the constitutional timeframe should be deleted.

- d) Clause 6 on Establishment of Equalization Fund Advisory Board- Sub-clauses 6(1)(c) and (f) be redrafted to align with provisions under sub-clauses 6(1)(d), (e), and (f) for consistency.
- e) Clause 8 on tenure of office of the Advisory Board- There is need to harmonize with the term under clause 6(3) which provides for a term of three years' renewable once or six years non-renewable.
- f) Clause 10 of functions of the Board- For clarity, substitute the term, "section (b)" with "paragraph 10(1)(b)". Secondly, specify to whom such recommendations are to be made."
- g) Sub-clauses 10(1)(g), 12(b), and (c), 15(2)(d) be amended by substituting the words "these Guidelines" with the words "this Act."
- h) Clause 11 on decisions of the Committees of the Board- Given that the acronym CS is undefined, it should be written in full and add the phrase "Cabinet Secretary" after the existing content. Further, the marginal note to Clause 11 is incomplete.
- i) Clause 14 on officer administering the Fund- Sub-Clause 14(2)(b) has narrowed the qualification of CEO to the area of health. For inclusivity purposes, it should be amended and redrafted by deleting skills in health insurance, health financing, health economics, and health care.
- j) Clause 15 on secretariat- sub-clause 15(2)(f)(i) be amended by deleting the words "have been" after the phrase "Government in Marginalized Areas."
- k) Clause 17 on establishment of County Technical Committees-
  - i. For ease of implementation of the fund, sub-clause 17(e) be redrafted to read, "not more than four technical officers from ministries relevant to the funding project".
  - ii. The Commission further recommended the deletion of sub-clause 17(f) since the same content was repeated in sub-clause 17(d).

- l) Clause 19 on establishment of Sub County Technical Committee. The Commission recommended the addition of a sub-county administrator as a member of this committee who shall also serve as the secretary.
- m) Clause 20 on functions of the sub-county Technical Committee
  - i. Sub-clause 20(c) be amended by substituting the words “access” with “assess.”
  - ii. Sub-clause 20(d) be amended by addition the words “to the County Technical Committee” at the end so that it is clear to who the committee will submit project proposals.
  - iii. Sub-clause 20(e) be amended by adding the words “implementation of” after “monitor.”
  - iv. Sub-clauses 20(f) and (g) be amended by deleting the words “and the member of the county executive.” Member of the county executive is secretary to the County Technical Committee.
- n) Clause 21 on Project Identification and Implementation Committee. For clarity-
  - i. Sub-clause 21(d) be amended by substituting the words “village administrator” with “ward administrator.”
  - ii. Under sub-clause 21(d), specify that the faith-based groups be operating within the area of operation of the committee.
  - iii. Under sub-clause 21(c) and (d)- Specify that it is a representative of each listed category.
- o) Clause 22 on Functions of Project Identification and Implementation Committee- sub-clause 22(d) be redrafted to read “supervise and report to the county technical committee on project implementation” For clarity.
- p) Clause 25 on preparation of work plans- sub-clause 25(4) be deleted since it is a repetition of sub clause 25(3).

- q) Clause 27 on quarterly reports on projects and disbursements- For clarity since there are many Commissions in Kenya, the term “Commission” be written in full to mean “Commission on Revenue Allocation.”

17. The Commission further made the following general comments-

- a) There is need to specify at what level the various committees are established under the Bill for clarity.
- b) The Bill is silent on compensation of committees. This should be indicated to be from the 3% administrative costs of the Board.
- c) Add a new Board function to establish all the technical committees as opposed to it being done by the County Commissioner. Additionally, include a monitoring and evaluation function for the Board.
- d) The Bill is silent on the flow of funds and procurement. The county technical committee should open the special purpose accounts with signatories being the relevant CEC. Sub County Technical Committee to carry out procurement and issue certificates.

### **2.3 The Council of Governors**

18. The representatives from the Council of Governors appeared before the Committee and submitted that having reviewed the Equalisation Fund (Administration) Bill, 2023, the Council of Governors on behalf of the 47 County Governments submits the following specific concerns-

- a) There is need for the Bill to clearly distinguish (In Parts) the process to be followed when using the Fund directly and when using it indirectly.
- b) Having witnessed the inefficiencies associated with the direct use of the Fund, the Council strongly opines that going forward, the Equalisation Fund should only be used indirectly as conditional grants to Counties.
- c) Proposals on Part III-Establishment of Advisory Board-
  - i. Clause 6(1)(f) be amended to read “three persons nominated by the Council of Governors drawn from areas identified as marginalised

by the Commission on Revenue Allocation”. This is to ensure adequate representation of the county governments on the Equalization Fund Advisory Board vis-à-vis the national government representation.

- ii. Clause 6(3) be deleted since it contradicts Section 8.
  - iii. New Clause 7 be inserted to provide for meetings of the Board-  
Frequency of meetings, notice of meetings, quorum of conduct of business, chairperson of the meetings, voting, procedure for meetings and attendance of other persons to meetings of the Board.
- d) Sub-clauses 10(1)(g), 12(a) and (c), and 15(1)(d) be amended by deleting the words “these guidelines” and replacing thereof with “this Act”. This is an Act of Parliament and not Guidelines.
- e) Proposal on Part IV on County Technical Committees-Clauses 17-22-
- i. Clearly indicate that clauses 17-22 only apply to the direct use of the Fund. This is because there already exists a framework for management of conditional grants (indirect use of the Fund) which does not envision such committees.
  - ii. Secondly, clause 17 on establishment of County Technical Committees be amended by deleting the words “County Commissioner” and substitute therefore with the words “Governor”.
  - iii. Sub-Clause 17(a) be amended to read as “Chairperson who shall be the County Governor or a person designated by the Governor in writing”.
  - iv. Sub-Clause 17(f) be deleted since it is a repetition of sub-clause 17 (d).
  - v. Clauses 19 and 20 on establishment of sub-county committees be deleted. This is because it is duplicitous and that the functions of the sub-county committee can be performed by the County technical committee.

f) Proposal on Clauses 23-28-

- i. That there is a need to distinguish (in parts) the roles of the County Executive Committee Member responsible for matters relating to finance in the identification of projects and related processes to avoid duplication of roles.
- ii. Clause 24 be amended to read as follows: “The County Executive Committee Member responsible for matters relating to finance shall submit work plans to the Board for approval”. This is attributed to the fact that the CECM, Finance is only responsible to the Board and not the technical committee which has different reporting lines as per the Bill.

#### **2.4 The National Treasury and Economic Planning**

19. The National Treasury submitted a written memoranda with the following comments regarding the Bill-

- a) The Bill has been overtaken by events considering there is already an administrative and management framework in place for the administration of Fund.
- b) The National Treasury is mandated to administer the Fund pursuant to section 18 of the PFM Act, 2012.
- c) Public Finance Management (Equalization Fund Administration) Regulations, 2021 establishes the administrative and management framework in administration of the Fund.
- d) The Bill does not provide any remedy it tries to cure. It has adopted the current structure for moving the administration of the Fund from the PFM Act to the Bill.
- e) Though Parliament is mandated to extend the life of the Equalization Fund for a fixed period of time, it would be proper for this to be done in a stand-

alone Bill, 24 months to the lapse of the 20 years specified in Article 204(6) of the Constitution.

- f) The current administration and management framework of the administration of the Fund under the PFM Act is sufficient hence there is no need for the Bill. In addition, any act of derailment in the administration of the fund will affect the achievement of the intended purpose of the Fund.
- g) The Committee should consider rejecting the Bill or subject it to further consultations with stakeholders.

## **2.5 The National Gender and Equality Commission**

20. The National Gender and Equality Commission submitted a written memoranda on the Bill with the following proposals-

- a) Clause 6 on establishment of the Board- Clause 6(1)(d) be amended by substituting the person nominated by the National Assembly to represent pastoralists with two persons representing pastoralists and Persons with Disabilities (PWDs). The inclusion of a person representing PWDs will be in compliance with the Constitution and the Mwongozo Code.

In addition, clause 6(1)(e) be amended by qualifying the person nominated by the Senate as the criteria for the nomination is unclear.

Further, include a clause stating that in making the appointments, due regard shall be made in ensuring gender balance.

- b) Clause 9(b)(v) on vacation of office be deleted without any replacement. This is because the provision is prejudicial and discriminatory to PWDs. The Convention on the Rights of PWDs and the PWD Act provides for reasonable accommodation meaning adjustment or modification of the working environment to accommodate an individual with proven need.
- c) Clause 11 be amended by completing the marginal note and inserting the word "Board". Further, set out the words in CS in full to mean Cabinet Secretary.

- d) For consistency, Clause 14(1) amended by deleting the subtitle “Officer administering the Fund”. and replacing therefore with the words “administration of the Fund”. Further, consider amending the officer administering the Fund to read “administrator of the Fund” wherever it appears in the Bill.
- e) Clause 21 on project identification and implementation Committee- sub clause 21(c) be amended by substituting the words “a representative of” with the words “three persons representing”. Further, sub clause 21(d) be amended by substituting the words “a representative of” with the words “two persons representing”. These proposed amendments will bring clarity to the membership of the project identification and implementation committees.
- f) For purposes of inclusion of persons who are not literate and those with print disabilities, subclause 22(a) be amended by inserting the word “in accessible format” after the word “publication”.

## CHAPTER THREE

### SUMMARY OF STAKEHOLDERS SUBMISSIONS AND THEMATIC AREAS

21. Upon consideration of stakeholders' submissions and analysing the Bill, the Committee notes as follows-

- a) Flow of Funds- Each benefiting county is expected to open a special purpose account in the Central Bank of Kenya. All funds allocated to the projects within a particular county shall be transferred to the respective special purpose account. The implementation of projects in a beneficiary county government will be expended from this account.
- b) Working Framework- The Bill is very elaborate on the roles of each participating party including the Board, county technical committees, sub-county technical committees and project identification and implementation committees. The project identification and implementation committee are at core of ensuring the needs (projects) of the marginalised communities are identified and implemented to benefit the said community.
- c) Composition of the Fund Board- the representation of the Council of County Governors was inadequate noting the project implementation was at county levels. The Committee also notes the concerns of the NGEK on representation of the persons living with disability at the Board level.
- d) Establishment of the Technical Committee- The Bill proposes the Committee to be established by the County Commissioner. However, the Committee proposes amendments to mandate the Board to establish these technical committees.

## CHAPTER FOUR

### COMMITTEE OBSERVATIONS

22. The Committee having considered and analysed submissions from various stakeholders, made the following observations-

- a) Given that the project implementation will take place in marginalised areas identified within Counties, the representation of the county governments on the Equalization Fund Advisory Board technical committees was inadequate compared with the national government representation. For instance-
  - The county technical committee comprises the Constituency Development Fund Managers while the sub-county technical committee shall comprise the secretary of the Constituency Development Fund.
  - The Controller of Budget forms part of the Advisory Board yet the primary role of Controller of Budget is to oversee and monitor the use of public funds by authorising withdrawal of funds and reporting back to Parliament.

Therefore, there is need for adequate representation of county governments from the Council of Governors. This would boost the county government's engagement in the administration of the Fund.

- b) The Commission on Revenue Allocation should provide a clear definition of the term “marginalised areas” in development of the Third policy on marginalisation.
- c) The Bill does not have a provision on compensation of the various committees established by the Board. There is a need to indicate whether it will be charged from the administration costs of the Board.
- d) The Bill should be explicit on the flow of funds. Therefore, benefitting counties shall open special purpose accounts at the Central Bank of Kenya

into which amount appropriated and allocated to fund projects shall be transferred.

- e) To ensure efficient utilisation and seamless implementation of the Fund, the Equalisation Fund should only be utilised indirectly as conditional grants to Counties.
- f) The Bill had not provided for conduct of meetings of the Board. The bill should provide for meetings of the Board; frequency of meetings, notice of meetings, quorum of conduct of business, chairperson of the meetings, voting, procedure for meetings and attendance of other persons to meetings of the Board.
- g) The Advisory Board should establish all the technical committees as opposed to it being done by the County Commissioner.

## CHAPTER FIVE

### COMMITTEE RECOMMENDATIONS

23. Having considered the Bill, the Committee recommends that the Senate approves Equalisation Fund (Administration) Bill, 2023 (Senate Bills No.14 of 2023) with the following amendments. That-

- a) **Clause 2** be amended by introducing definition of the following terms-
  - i) First Policy to mean the first policy determined by the Commission on Revenue Allocation under Article 216(4) of the Constitution in identifying marginalised areas for purposes of Article 204(2) of the Constitution.
  - ii) by redefining the word “revenue” to mean the total revenue collected by the national government including ordinary revenue and Appropriations in Aid. This definition will ensure the provision is in tandem with Article 204(1) of the Constitution.
- b) **Clause 3** to indicate that the law shall apply for all projects under all policies on marginalisation developed by the Commission under Article 214(6) of the Constitution.
- c) **Clause 6** be amended by-
  - i) paragraph (f) to provide that the CoG shall nominate two persons to serve in the Board.
  - ii) deleting paragraph (h) which provided that CoB will have a representative in the Board.
  - iii) introducing a new paragraph to provide that the Cabinet Secretary shall nominate one member of the Board to represent persons living with disability.
  - iv) substituting sub-clause 3 to provide that a person appointed under subsection (1)(d),(e)and (f) shall hold office for a term of three years and

shall be eligible for reappointment for one further fixed term of three years.

- d) **Clause 8** be deleted for its a repetition of clause 6(3)
- e) **Clause 11** be amended by rewriting the expression CS to mean Cabinet Secretary.
- f) **Clause 10 and clause 12** be amended by replacing the word guidelines with the word Act.
- g) **Clause 13** be amended by introducing a new sub-clause to provide that the expenses of the Board shall be subject to the financial year in which this law comes into force and shall not apply with respect to preceding financial years.
- h) **Clause 14(2)(b)** be amended to provide that the Chief Executive Officer of the Board shall have at least ten years' experience at a senior management level with skills in financial management, business administration, economics or law.
- i) **Clause 17** be amended-
  - i) paragraph (a) to provide that the County Commissioner and the Governor shall be co-chairpersons.
  - ii) paragraph (e) to provide nomination to the County Technical Committee a public officer employed in the county government with technical expertise in areas where the prioritized projects fall.
  - iii) deleting paragraph (f) which requires county assembly to nominate a representative to the County Technical Committee.
- j) **Clause 17 and 19** - be amended to provide that the Board shall establish the county technical committee and sub-county technical committee.
- k) **Clause 19** be amended-
  - i) paragraph (a) to provide that the deputy county commissioner and the sub-county administrator shall be co-chairpersons.
  - ii) paragraph (b) to provide for nomination of-

- not more than four public officers appointed by the county government with technical expertise in the areas of the prioritized projects.
- not more than two public officers appointed by the national government with technical expertise in the areas of the prioritized projects.

l) **Clause 25(4)**- should be deleted since the issue is already provided for under clause 25(3).

m) Introducing a **schedule** to the Bill to provide for matters relating meetings of the Board as follows-

- i) The Board shall meet at least once in every three months to conduct the business of the Board of Authority.
- ii) The chairperson may on his or her own motion, or upon request by a member, call a special meeting of the Board at any time, where he or she considers it expedient for the transaction of the business of the Board.
- iii) Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Board of the Authority shall be given to every member of the Board by the secretary.
- iv) The quorum at a meeting of the Board of the Authority shall be half of the members.
- v) The chairperson shall preside at the meetings of the Board of the Authority and in the absence of the chairperson, the vice-chairperson or a member of the Board elected by the members present from among their number shall preside.
- vi) The matters of the Board shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

- vii) The proceedings of the Board of the Authority shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.
- viii) At the first meeting of the Board, the members shall elect a vice-chairperson, not being an *ex-officio* member, from among its members.
- ix) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for attendance of any other persons at the Board meetings.

13<sup>th</sup> July, 2023

The Clerk of the Senate,  
Parliament Buildings,  
NAIROBI.

**COMMITTEE STAGE AMENDMENTS TO THE EQUALISATION FUND  
(ADMINISTRATION) BILL, SENATE BILLS NO. 14 OF 2023**

NOTICE is given that Sen. (Capt.) Ali Ibrahim Roba, Chairperson, Committee on Finance and Budget, intends to move the following amendments to the Equalisation Fund (Administration) Bill, Senate Bills No. 14 of 2023, at the Committee Stage-

**CLAUSE 3**

**THAT** clause 3 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph-

- (b) provide for completion of all projects under all policies developed by the Commission under Article 214(6) of the Constitution;

**CLAUSE 6**

**THAT** clause 6 of the Bill be amended by-

- (a) in paragraph (f) by deleting the words "one person" appearing immediately before the words "nominated by the Council" and substituting therefor the words "three persons";

- (b) by deleting paragraph (h);

- (c) by deleting subclause 3 and substituting therefor the following new subclause-
- (3) A person appointed under subsection (1)(d),(e) and (f) shall hold office for a term of three years and shall be eligible for reappointment for one further fixed term of three years.

**CLAUSE 8**

**THAT** the Bill be amended by deleting clause 8.

**CLAUSE 10**

**THAT** clause 10 of the Bill be amended in subclause (1) by deleting the words "these Guidelines" appearing immediately after the words "Commission on Revenue Allocation" in paragraph (g) and substituting therefor the words "this Act".

**CLAUSE 11**  
**THAT** clause 11 of the Bill be amended by deleting the expression "CS" appearing immediately before the words "shall take into" and substituting therefor the words "Cabinet Secretary"

**CLAUSE 12**  
**THAT** clause 12 of the Bill be amended-

- (a) in paragraph (a) by deleting the words "these Guidelines" appearing immediately after the words "power under" and substituting therefor the words "this Act";

- (b) in paragraph (c) by deleting the words "these Guidelines" appearing immediately after the words "the Board under" and substituting therefor the words "this Act";

**CLAUSE 13**  
**THAT** clause 13 of the Bill be amended by inserting the following new subclause immediately after subclause (3)-

(4) For the avoidance of doubt, the provisions of subsection (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.

**CLAUSE 14**  
**THAT** clause 14 of the Bill be amended in paragraph (2) by deleting paragraph (b) and substituting therefor the following new paragraph-

- (b) has at least ten years' experience at a senior management level with skills in financial management, business administration, economics or law.

**CLAUSE 17**  
**THAT** clause 17 of the Bill be amended-

- (a) in the opening phrase by deleting the words "each County Commissioner of an eligible county shall" appearing immediately before the words "establish and convene" and substituting therefor the words "The Board shall, in every eligible county";

- (b) by deleting paragraph (a) and substituting therefor the following new paragraph-
- (a) the County Commissioner and the Governor who shall be co-chairpersons;

- (c) by deleting paragraph (e) and substituting therefor the following new paragraph-
- (e) a public officer employed in the county government with technical expertise in areas that the prioritized projects fall; and

- (d) by deleting paragraph (f).

**CLAUSE 19**

**THAT** clause 19 of the Bill be amended -

(a) in the opening phrase by deleting the words 'The County Commissioner of an eligible county shall' appearing immediately before the words "establish a sub-county" and substituting therefor the words "The Board shall, in every eligible county";

(b) by deleting paragraph (a) and substituting therefor the following new paragraph-  
(a) the deputy county commissioner and the sub-county administrator who shall be co-chairpersons;

(c) by deleting paragraph (b) and substituting therefor the following new paragraphs-  
(b) not more than two public officers appointed by the county government with technical expertise in the areas of the prioritized projects;

(ba) not more than two public officers appointed by the national government with technical expertise in the areas of the prioritized projects;

**CLAUSE 21**

**THAT** clause 21 of the Bill be amended in the opening phrase by deleting the words 'The County Commissioner of an eligible county shall' appearing immediately before the words "establish a Project Identification" and substituting therefor the words "The Board shall, in every eligible county".

**CLAUSE 25**

**THAT** clause 25 of the Bill be amended by deleting subclause (4).

**NEW CLAUSE**

**THAT** the Bill be amended by inserting the following new clause immediately after clause 13-

Conduct of the Board. **13A.** (1) The Board shall conduct its affairs in accordance with the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

**SCHEDULE**

THAT the Bill be amended by inserting the following new schedule

(13A)

**SCHEDULE**

**PROVISIONS RELATING TO MEETINGS OF THE ADVISORY BOARD**

1. The Board shall meet at least once in every three months to conduct the business of the Board of Authority.

2. The chairperson may on his or her own motion, or upon request by a member, call a special meeting of the Board at any time, where he or she considers it expedient for the transaction of the business of the Board.

3. Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Board of the Authority shall be given to every member of the Board by the secretary.

4. The quorum at a meeting of the Board of the Authority shall be half of the members.

5. The chairperson shall preside at the meetings of the Board of the Authority and in the absence of the chairperson, the vice-chairperson or a member of the Board elected by the members present from among their number shall preside.

6. The matters of the Board shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

7. The proceedings of the Board of the Authority shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

8. At the first meeting of the Board, the members shall elect a vice-chairperson, not being an *ex-officio* member, from among its members.

9. Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for attendance of any other persons at the meetings of the Board.

**CLAUSE 2**

THAT clause 2 of the Bill be amended by-

- (a) inserting the following definition immediately after the definition of the term "eligible county"-

“First Policy” means the first policy determined by the Commission on Revenue Allocation under Article 216(4) of the Constitution in identifying marginalized areas for purposes of Article 204(2) of the Constitution.”

(b) by deleting the definition of the word “revenue” and substituting therefor the following new definition-

“revenue” means the total revenue collected by the national government including ordinary revenue and Appropriations in Aid;

**Dated 13<sup>th</sup> July, 2023.**

A handwritten signature in black ink, appearing to read 'Ali Ibrahim Roba', written in a cursive style.

Sen. (Capt.) Ali Ibrahim Roba,  
*Chairperson,*  
*Committee on Finance and Budget.*



**MINUTES OF THE SIXTY-THIRD HYBRID MEETING OF THE SENATE  
STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON  
THURSDAY, 29<sup>TH</sup> JUNE, 2023 AT COUNTY HALL, GROUND FLOOR  
BOARD ROOM, PARLIAMENT BUILDINGS FROM 9.00 A.M.**

**PRESENT**

1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP - **Chairperson**
2. Sen. Maureen Tabitha Mutinda, MP - **Vice-Chair (Attended Virtually)**
3. Sen. (Dr.) Boni Khalwale, CBS, MP - Member
4. Sen. Mohamed Faki Mwinyihaji, MP - Member
5. Sen. Richard Momoima Onyonka, MP - Member (Attended Virtually)
6. Sen. Eddy Gicheru Oketch, MP - Member (Attended virtually)

**ABSENT WITH APOLOGY**

1. Sen. Shakila Abdalla Mohamed, MP - Member
2. Sen. Joyce Chepkoech Korir, MP - Member
3. Sen. Tabitha Karanja Keroche, MP - Member

**SECRETARIAT**

1. Ms. Beverlyne Chivadika - Clerk Assistant
2. Ms. Lucy Makara - Deputy Director, PBO
3. Ms. Lucy Radoli - Legal Counsel
4. Mr. Kennedy Owuoth - Fiscal Analyst
5. Ms. Joan Mahinda - Researcher
6. Mr. Elijah Ichwara - Audio Officer
7. Mr. Jeff Mburu - Attachee
8. Mr. Eugene Otieno - Intern, Media Relations Office

**MIN/SEN/SCF&B/346/2023**

**PRELIMINARIES**

The Chairperson called the meeting to order at 9:30 a.m. This was followed by a word of prayer. Thereafter, a round of introduction.

**MIN/SEN/SCF&B/347/2023**

**ADOPTION OF THE AGENDA**

The agenda was adopted after it was proposed by Sen. (Dr.) Boni Khalwale, CBS, MP, and seconded by Sen. Richard Momoima Onyonka, MP, as listed below-

1. Prayer;
2. Introduction;
3. Adoption of the agenda;
4. Confirmation of the 61<sup>st</sup> sitting;
5. Matters arising from minutes of the previous meeting;
6. Consideration of the draft report on the Equalization Fund (Administration) Bill, 2023 (Senate Bills No.14 of 2023) (*Committee Paper No.50*);
7. Adoption of the Report on the Equalization Fund (Administration) Bill, 2023 (Senate Bills No.14 of 2023);
8. Consideration of the draft Equalization Fund (Appropriation) Bill for the FY 2023/24 (*Committee Paper No.51*);
9. Any Other Business; and
10. Date of the Next Meeting and Adjournment.

**MIN/SEN/SCF&B/348/2023**      **CONFIRMATION OF MINUTES**

The minutes of the Sixty-First sitting held on Thursday, 22<sup>nd</sup> June, 2023 at 9:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Maureen Tabitha Mutinda, MP, and seconded by Sen. Mohamed Faki Mwinyihaji, MP.

**MIN/SEN/SCF&B/349/2023**      **CONSIDERATION OF DRAFT  
EQUALIZATION FUND (APPROPRIATION)  
BILL FOR THE FY 2023/24 (COMMITTEE  
PAPER NO.51)**

The Committee considered Paper No.51 on a draft Equalization Fund (Appropriation) Bill for the FY 2023/24. The draft proposes to share the allocation of Kshs.10,867,400,000 amongst the thirty-four (34) benefiting counties-1,424 marginalized areas- based on the Second Policy on Marginalization.

After deliberation, the Committee resolved that the Bill be published. The Committee noted the need for expediting the process for publication, processing and consideration of the bill since the FY 2023/24 was almost beginning.

**MIN/SEN/SCF&B/350/2023**      **CONSIDERATION OF THE DRAFT REPORT  
ON EQUALIZATION FUND  
(ADMINISTRATION) BILL, 2023 (SENATE  
BILLS NO.14 OF 2023) (COMMITTEE PAPER  
NO.50)**

The Committee considered Paper No.50 on draft report on Equalization Fund (Administration) Bill, 2023 which comprised an overview of the Bill, overview of public participation, summary of stakeholders' submissions and thematic areas; Committee observations and Committee recommendations.

MIN/SEN/SCF&B/351/2023

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

Having considered the draft report on the Equalization Fund (Administration) Bill, 2023, the Committee unanimously adopted the report having been proposed by Sen. (Dr.) Boni Khalwale, CBS, MP, and seconded by Sen. Eddy Gicheru Oketch, MP, with the recommendation that the Senate approves the Bill with amendments.

MIN/SEN/SCF&B/352/2023

ANY OTHER BUSINESS

- a) A letter from the CEO, Council of Governors (CoG) requesting for a meeting with the Committee to discuss the implementation of the conditional grant on Supplement for Construction of County Headquarter and find a way forward on completion of the stalled projects. The Committee acceded to the request and resolved to invite CoG to a meeting on Tuesday, 4<sup>th</sup> July, 2023 at 11:00 a.m. and;
- b) Committee's attention was drawn to the fact that in Supplementary Budget II for the FY 2022/23, approved by National Assembly the Kshs. 10,330,317,433 (being Kshs.7,068,000,000 for FY 2022/23 and Kshs.3,262,317,433 as arrears for FY 2021/22) allocated to the Equalization Fund in Supplementary Budget I for the FY 2022/2023, was revised to zero.


The Committee was concerned by the revisions made to the allocations of the Equalization Fund in Supplementary II and their effect on the implementation of the Equalization Fund Appropriation Bill, 2023 upon its assent.

After deliberations, the Committee resolved to invite the Cabinet Secretary, National Treasury and Economic Planning to a meeting that will be held on Thursday, 6<sup>th</sup> July, 2023 at 9:00 a.m. to provide clarification on the aforementioned matter.

MIN/SEN/SCF&B/353/2023

ADJOURNMENT

The meeting adjourned at 10:03 a.m. The next meeting shall be held on Tuesday, 4<sup>th</sup> July, 2023 at 9:00 a.m.

SIGNATURE..........DATE.....18/07/2023.....

SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP  
(CHAIRPERSON)



**MINUTES OF THE FIFTY-NINTH MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON THURSDAY, 15<sup>TH</sup> JUNE, 2023 AT THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDINGS FROM 9.00 A.M.**

**PRESENT**

- |   |   |                         |
|---|---|-------------------------|
| 1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP | - | <b>Chairperson</b>      |
| 2. Sen. Maureen Tabitha Mutinda, MP       | - | <b>Vice-Chairperson</b> |
| 3. Sen. (Dr.) Boni Khalwale, CBS, MP      | - | Member                  |
| 4. Sen. Shakila Abdalla Mohamed, MP       | - | Member                  |
| 5. Sen. Eddy Gicheru Oketch, MP           | - | Member                  |
| 6. Sen. Richard Momoima Onyonka, MP       | - | Member                  |

**ABSENT WITH APOLOGY**

- |                                     |   |        |
|-------------------------------------|---|--------|
| 1. Sen. Mohamed Faki Mwinyihaji, MP | - | Member |
| 2. Sen. Joyce Chepkoech Korir, MP   | - | Member |
| 3. Sen. Tabitha Karanja Keroche, MP | - | Member |

**SECRETARIAT**

- |                            |   |                         |
|----------------------------|---|-------------------------|
| 1. Mr. Christopher Gitonga | - | Clerk Assistant         |
| 2. Ms. Beverlyne Chivadika | - | Clerk Assistant         |
| 3. Ms. Lucy Makara         | - | Deputy Director, PBO    |
| 4. Ms. Lucy Radoli         | - | Legal Counsel           |
| 5. Ms. Joan Mahinda        | - | Researcher              |
| 6. Mr. Sekento Tonkei      | - | Researcher              |
| 7. Mr. Barasa Nandemu      | - | Media Relations Officer |
| 8. Ms. Shirley Milimu      | - | Audio Officer           |
| 9. Mr. Jeff Mburu          | - | Attachee                |

**MIN/SEN/SCF&B/320/2023**      **PRELIMINARIES**

The Chairperson called the meeting to order at 9:30 a.m. This was followed by a word of prayer. Thereafter, a round of introduction.

**MIN/SEN/SCF&B/321/2023**      **ADOPTION OF THE AGENDA**

The agenda was adopted after it was proposed by Sen. Maureen Tabitha Mutinda, MP, and seconded by Sen. Richard Momoima Onyonka, MP, as listed below-

1. Prayer;
2. Introduction;
3. Adoption of the Agenda;
4. Confirmation of Minutes of the 56<sup>th</sup>, and 58th sittings;
5. Matters arising from the Minutes of the previous sittings;
6. Resumption of consideration of a matrix of stakeholders' submissions on Equalization Fund (Administration) Bill, 2023 (Senate Bills No. 14 of 2023) (*Committee paper No. 45(C)*);
7. Consideration of a Petition by Mokaya Magembe Bernard on regulation of the credit profession (*Committee Paper No. 47*);
8. Consideration of Controller of Budget (CoB) reports on the County Governments Budget Implementation (*Committee Paper No.48*);
9. Any Other Business; and
10. Date of the Next Meeting and Adjournment.

**MIN/SEN/SCF&B/322/2023      CONFIRMATION OF MINUTES**

- a) The Minutes of the Fifty-Eighth sitting held on Tuesday, 13<sup>th</sup> June, 2023 at 10.00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Shakila Abdalla Mohamed, MP, and seconded by Sen. Maureen Tabitha Mutinda, MP.
- b) Confirmation of the minutes of the Fifty-Sixth sitting held on Tuesday, 6<sup>th</sup> June, 2023 was deferred.

**MIN/SEN/SCF&B/323/2023      RESUMPTION OF CONSIDERATION OF  
STAKEHOLDERS SUBMISSIONS ON  
EQUALIZATION FUND (ADMINISTRATION)  
BILL, 2023 (SENATE BILLS NO. 14 OF 2023)**

The Committee resumed considerations of the stakeholders' submissions on the Equalization Fund (Administration) Bill. The Committee resolved as follows-

- a) Sub-clause 13(1) shall not apply retrospectively, but shall apply for the allocation in financial year to which Act is enacted.
- b) Sub-clause 13(3)-The administrative costs and expenses of the Advisory board be retained at 3% of the approved annual allocation to the Fund.
- c) Clause 14- the marginal note be amended to read to read "administration of the Fund" instead of "officer administering the Fund."
- d) Clause 14(b) be amended to provide that a person is qualified for appointment as a CEO if the person has at least ten years' experience at a senior management level with skills in finance, administration, economics and business management.
- e) Sub-clause 15(2)(f)(i) be amended by deleting the words, "have been" after the phrase "government in marginalized areas."

- f) Clause 17 on establishment of County Technical Committees be amended as follows:
- Sub-clause 17(a) be amended to provide that the County Commissioner and the Governor shall co-chair the Committee.
  - Sub-clause 17(e) be amended to read as follows “a qualified technical public officer representing the implementing sector with prioritized projects.”
  - Sub-clause 17(f) be deleted since it is a repetition of 17(d).
- g) Sub-clause 19(a) be amended so that that the sub-county commissioner and sub-county administrator shall co-chair the sub-county technical committee.
- h) Clause 21(d) be amended to specify that the representative of faith based groups and non-governmental organizations must be operating within the area of operation of the committee.
- i) Clause 25(4) be deleted since it was a repetition of 24(3).
- j) Clause 27 be amended by writing the term “Commission” in full to mean “Commission on Revenue Allocation.”

After the deliberations, the Committee resolved that the Secretariat to prepare amendments and report on Equalization Fund (Administration) Bill, 2023 for consideration and adoption.

**MIN/SEN/SCF&B/324/2023**      **CONSIDERATION OF A PETITION BY MOKAYA MAGEMBE BERNARD ON REGULATION OF THE CREDIT PROFESSION (COMMITTEE PAPER NO. 47)**

The Committee considered Paper No.47 on a Petition by Mokaya Magembe Bernard on the regulation of the credit profession that was committed to the Committee on Tuesday, 23rd May, 2023.

After deliberations, the Committee resolved to invite the Petitioner, CCP. Mokaya Magembe Bernard to a meeting to deliberate on the matter.

**MIN/SEN/SCF&B/325/2023**      **CONSIDERATION OF CONTROLLER OF BUDGET (COB) REPORTS ON THE COUNTY GOVERNMENTS BUDGET IMPLEMENTATION (COMMITTEE PAPER NO. 48)**

Committee considered paper No.48 on Controller of Budget report on the County Governments Budget Implementation.

The Committee noted the following-

- a) The gap on Own Source Revenue between the targets and actual revenue generated continues to widen over the years. There is need to engage counties to

deliberate on how to enhance efficiency in collection and administration of county governments Own Source Revenue.


- b) Nairobi City County accounts for the largest amount of pending bills at Kshs.102.81 billion out of the total Kshs. 159.73 billion county governments pending bills. There is need to engage counties to deliberate on measures to reduce accumulation of pending bills.

After deliberations, the Committee resolved-

- a) That, the Secretariat to prepare an analysis of the County Governments Budget Implementation for the FYs 2020/21, 2021/22 and 2022/23 up to the 3<sup>rd</sup> Quarter based on OSR, pending Bills and wage Bill.
- b) To Invite the Controller of Budget to a meeting to provide clarification on issues raised by the Committee regarding the reports on the County Governments Budget Implementation.

**MIN/SEN/SCF&B/326/2023**      **ADJOURNMENT**

There being no other business the meeting was adjourned at 12.03 p.m. The next meeting shall be by notice.

SIGNATURE..........DATE 20/6/2023.....  
SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP  
(CHAIRPERSON)



**MINUTES OF THE FIFTY-SEVENTH HYBRID MEETING OF THE SENATE  
STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON  
THURSDAY, 8<sup>TH</sup> JUNE, 2023 AT THE GROUND FLOOR BOARDROOM,  
COUNTY HALL, PARLIAMENT BUILDINGS FROM 12 NOON**

**PRESENT**

- |   |   |                             |
|---|---|-----------------------------|
| 1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP | - | <b>Chairperson</b>          |
| 2. Sen. Maureen Tabitha Mutinda, MP       | - | <b>Vice-Chairperson</b>     |
| 3. Sen. Richard Momoima Onyonka, MP       | - | Member                      |
| 4. Sen. Mohamed Faki Mwinyihaji, MP       | - | Member                      |
| 5. Sen. Shakila Abdalla Mohamed, MP       | - | Member                      |
| 6. Sen. Eddy Gicheru Oketch, MP           | - | Member (Attended virtually) |

**ABSENT WITH APOLOGY**

- |                                      |   |        |
|--------------------------------------|---|--------|
| 1. Sen. (Dr.) Boni Khalwale, CBS, MP | - | Member |
| 2. Sen. Joyce Chepkoech Korir, MP    | - | Member |
| 3. Sen. Tabitha Karanja Keroche, MP  | - | Member |

**SECRETARIAT**

- |                            |   |                         |
|----------------------------|---|-------------------------|
| 1. Mr. Christopher Gitonga | - | Clerk Assistant         |
| 2. Ms. Beverlyne Chivadika | - | Clerk Assistant         |
| 3. Ms. Lucy Radoli         | - | Legal Counsel           |
| 4. Ms. Joan Mahinda        | - | Researcher              |
| 5. Mr. Sekento Tonkei      | - | Researcher              |
| 6. Mr. Barasa Nandemu      | - | Media Relations Officer |
| 7. Mr. Daniel Kirwa        | - | Serjeant-at-arms        |
| 8. Ms. Shirley Milimu      | - | Audio Officer           |
| 9. Mr. Jeff Mburu          | - | Attachee                |

**MIN/SEN/SCF&B/308/2023**

**PRELIMINARIES**

The Chairperson called the meeting to order at 12:20 p.m. This was followed by a word of prayer. Thereafter, a round of introduction.

**MIN/SEN/SCF&B/309/2023**

**ADOPTION OF THE AGENDA**

The agenda was adopted after being proposed by Sen. Maureen Tabitha Mutinda, MP, and seconded by Sen. Shakila Abdalla Mohamed, MP, as listed below-

1. Prayer;
2. Introduction;
3. Adoption of the Agenda;
4. Confirmation of Minutes of the 52<sup>nd</sup>, 53<sup>rd</sup>, and 54<sup>th</sup> sittings;
5. Matters arising from minutes of previous meetings;
6. Meeting with Cabinet Secretary, National Treasury, and Economic Planning to deliberate on the Equalization Fund (Administration) Bill, 2023 (Senate Bills No. 14 of 2023) (*Committee Paper No. 43(B)*)
7. Consideration of legislative proposals on (Committee Paper No. 46)-
  - a) Insolvency Act Amendment
  - b) Public Finance Management Act Amendment
8. Any Other Business; and
9. Date of the Next Meeting and Adjournment.

**MIN/SEN/SCF&B/310/2023**

**CONFIRMATION OF MINUTES**

- a) The Minutes of the Fifty-Second sitting held on Tuesday, 30<sup>th</sup> May, 2023 at 9:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Shakila Abdalla Mohamed, MP, and seconded by Sen. Richard Momoima Onyonka, MP.
- b) The Minutes of the Fifty-Third sitting held on Tuesday, 30<sup>th</sup> May, 2023 at 1:30 p.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Mohamed Faki Mwinyihaji, MP, and seconded by Sen. Maureen Tabitha Mutinda, MP.
- c) The Minutes of the Fifty-Fourth sitting held on Wednesday, 31<sup>st</sup> May, 2023 at 8:30 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Maureen Tabitha Mutinda, MP, and seconded by Sen. Shakila Abdalla Mohamed, MP.

**MIN/SEN/SCF&B/311/2023**

**MEETING WITH THE CABINET SECRETARY, NATIONAL TREASURY AND ECONOMIC PLANNING TO DELIBERATE ON THE EQUALIZATION FUND (ADMINISTRATION) BILL, 2023 (SENATE BILLS NO. 14 OF 2023) (COMMITTEE PAPER NO.45(B))**

The Committee noted the apology letter from the Cabinet Secretary, National Treasury and Economic Planning. In addition, the CS had forwarded submissions on the Equalization Fund (Administration) Bill, 2023.

The Committee noted that the submission would be considered in a meeting which would be scheduled to consider stakeholders' submissions on the Bill.

MIN/SEN/SCF&B/312/2023

CONSIDERATION OF LEGISLATIVE  
PROPOSALS BEFORE THE COMMITTEE  
(COMMITTEE PAPER NO.46)

The Committee Considered Committee Paper No.46 on legislative proposals that were committed to the Committee by the Speaker of the Senate for pre-publication scrutiny-

- (i) Insolvency Act Amendment
- (ii) Public Finance Management Act Amendment

a) **Legislative proposal on Insolvency Act Amendment**

The Committee considered the proposed Insolvency Act Amendment as referred by the Speaker of the Senate for pre-publication scrutiny.

Pursuant to standing order 131(1)(b), the Committee resolved to recommend that the proposal may be published with a variation on clause 3 in the proposed new section 575E(1) by extending the time period for the fast-tracked administration process from eleven months to a period not exceeding eighteen months.

b) **Legislative proposal on Public Finance Management Act (PFMA) Amendment**

The Committee considered the proposed County Public Finance Laws (Amendment) as referred by the Speaker of the Senate for pre-publication.

The Committee noted the following-


- (i) The provision on establishment of County Assembly Service Fund already exists in another law, section 34 of the County Assembly Services Act of 2017.
- (ii) The cash requisition process by the county assemblies will be affected by the amendment.
- (iii) Further, the legislative proposal will lead to consequential amendment of the County Assembly Services Act of 2017.

After deliberations, the Committee resolved that the secretariat should prepare a comprehensive brief on the legislative proposal on PFM Act amendment for consideration by the Committee in the next meeting. The brief should provide information on the existing laws and the actual cash requisition processes to be affected by the amendment. Thereafter, the Committee shall invite the Sponsor of the legislative proposal, Sen. Kathuri Murungi, MP, to a meeting to deliberate on the legislative proposal.

MIN/SEN/SCF&B/313/2023

ADJOURNMENT

There being no other business, the meeting was adjourned at 1:35 p. m. The next meeting is to be on notice.

SIGNATURE..........DATE.....13/06/2023.....

SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP  
(CHAIRPERSON)



**MINUTES OF THE FIFTY-SIXTH MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON TUESDAY, 6<sup>TH</sup> JUNE, 2023 AT THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDINGS FROM 12.10 P.M.**

**PRESENT**

- |   |   |                    |
|---|---|--------------------|
| 1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP | - | <b>Chairperson</b> |
| 2. Sen. (Dr.) Boni Khalwale, CBS, MP      | - | Member             |
| 3. Sen. Mohamed Faki Mwinyihaji, MP       | - | Member             |
| 4. Sen. Shakila Abdalla Mohamed, MP       | - | Member             |

**ABSENT WITH APOLOGY**

- |                                     |   |                         |
|-------------------------------------|---|-------------------------|
| 1. Sen. Maureen Tabitha Mutinda, MP | - | <b>Vice-Chairperson</b> |
| 2. Sen. Richard Momoima Onyonka, MP | - | Member                  |
| 3. Sen. Joyce Chepkoech Korir, MP   | - | Member                  |
| 4. Sen. Tabitha Karanja Keroche, MP | - | Member                  |
| 5. Sen. Eddy Gicheru Oketch, MP     | - | Member                  |

**SECRETARIAT**

- |                            |   |                         |
|----------------------------|---|-------------------------|
| 1. Mr. Christopher Gitonga | - | Clerk Assistant         |
| 2. Ms. Beverlyne Chivadika | - | Clerk Assistant         |
| 3. Ms. Lucy Radoli         | - | Legal Counsel           |
| 4. Ms. Joan Mahinda        | - | Researcher              |
| 5. Mr. Sekento Tonkei      | - | Researcher              |
| 6. Mr. Barasa Nandemu      | - | Media Relations Officer |
| 7. Mr. Daniel Kirwa        | - | Serjeant-at-arms        |
| 8. Mr. Johnstone Simiyu    | - | Audio Officer           |
| 9. Mr. Jeff Mburu          | - | Attachee                |

**COMMISSION ON REVENUE ALLOCATION (CRA)**

- |                          |   |                   |
|--------------------------|---|-------------------|
| 1. Mr. Koitamet Ole Kina | - | Vice- Chairperson |
| 2. Mr. Muasya Mutiso     | - | Commissioner      |
| 3. Hon. Fatuma Gedi      | - | Commissioner      |

4. Dr. Isabel Waiyaki
5. Mr. James Katule
6. Ms. Lineth Oyugi
7. Ms. Mary Thiong'o

- Commissioner
- CEO
- Director, Economic affairs
- Communications Officer

**MIN/SEN/SCF&B/303/2023**      **PRELIMINARIES**

The Chairperson called the meeting to order at 12:15 p.m. This was followed by a word of prayer. Thereafter, a round of introduction.

**MIN/SEN/SCF&B/304/2023**      **ADOPTION OF THE AGENDA**

The agenda was adopted after being proposed by Sen. Shakila Abdalla Mohamed, MP, and seconded by Sen. Mohamed Faki Mwinyihaji, MP, as listed below-

1. Prayer;
2. Introduction;
3. Adoption of the Agenda;
4. Confirmation of Minutes of the 52<sup>th</sup>, 53<sup>rd</sup>, and 54<sup>th</sup> sittings;
5. Matters arising from minutes of previous meetings,
6. Meeting with CRA to deliberate on the Equalization Fund (Administration) Bill, 2023 (Senate Bills No. 14 of 2023) (*Committee Paper No. 43(A)*)
7. Any Other Business; and
8. Date of the Next Meeting and Adjournment.

**MIN/SEN/SCF&B/305/2023**      **CONFIRMATION OF MINUTES**

Confirmation of minutes of the 52<sup>nd</sup>, 53<sup>rd</sup>, and 54<sup>th</sup> sittings was deferred.

**MIN/SEN/SCF&B/306/2023**      **MEETING WITH CRA TO DELIBERATE ON  
THE EQUALIZATION FUND  
(ADMINISTRATION) BILL, 2023 (SENATE  
BILLS NO. 14 OF 2023)**

Upon invitation, the representatives from CRA presented the following specific proposals and recommendations on the Equalization Fund (Administration) Bill, 2023 as follows-

- a) Clause 2 on interpretation
  - Add the definition of the phrases, “First policy”, “unutilized balance”, and “revenue” in their alphabetical sequences to align with the Constitution.
  - Revenue should be defined as in Article 204(1) which refers to all revenue collected by the national government each year.

- b) Sub-Clause 3(b) -purpose of the Bill- be amended by adding the words “and all other subsequent policies determined by the Commission on Revenue Allocation for purposes of Article 204(2)” to cater for all other future policies.
- c) Sub-clause 3(d) be deleted since the Fund is yet to be fully operationalized, and that the Fund does not lapse at end of the FY. Consequently, Clause 32 which extends the constitutional timeframe should be deleted.
- d) Clause 6 on Establishment of Equalization Fund Advisory Board- Sub-clauses 6(1)(c) and (f) be redrafted to align with provisions under sub-clauses 6(1)(d), (e), and (f) for consistency.
- e) Clause 8 on tenure of office of the Advisory Board- There is need to harmonize with the term under clause 6(3) which provides for a term of three years’ renewable once or six years nonrenewable.
- f) Clause 10 of functions of the Board- For clarity, substitute the term, “section (b)” with “paragraph 10(1)(b)”. Secondly, specify to whom such recommendations are to be made.”
  - Sub-clauses 10(1)(g), 12(b), and (c), 15(2)(d) be amended by substituting the words “these Guidelines” with the words “this Act.”
- g) Clause 11 on decisions of the Committees of the Board- Given that the acronym CS is undefined, it should be written in full and add the phrase “Cabinet Secretary” after the existing content. Further, the marginal note to Clause 11 is incomplete.
- h) Clause 14 on officer administering the Fund- Sub-Clause 14(2)(b) has narrowed the qualification of CEO to the area of health. For inclusivity purposes, it should be amended and redrafted by deleting skills in health insurance, health financing, health economics, and health care.
- i) Clause 15 on secretariat- sub-clause 15(2)(f)(i) be amended by deleting the words “have been” after the phrase “Government in Marginalized Areas.”
- j) Clause 17 on establishment of County Technical Committees
  - For ease of implementation of the fund, sub-clause 17(e) be redrafted to read, “not more than four technical officers from ministries relevant to the funding project”.
  - The Commission further recommended the deletion of sub-clause 17(f) since the same content was repeated in sub-clause 17(d).
- k) Clause 19 on establishment of Sub county Technical Committee. The Commission recommended the addition of a sub-county administrator as a member of this committee who shall also serve as the secretary.
- l) Clause 20 on functions of the sub-county Technical Committee
  - Sub-clause 20(c) be amended by substituting the words “access” with “assess.”
  - Sub-clause 20(d) be amended by addition the words “to the County Technical Committee” at the end so that it is clear to who the committee will submit project proposals.


- Sub-clause 20(e) be amended by adding the words “implementation of” after “monitor.”
- Sub-clauses 20(f) and (g) be amended by deleting the words “and the member of the county executive.” Member of the county executive is secretary to County Technical Committee.
- m) Clause 21 on Project Identification and Implementation Committee. For clarity-
  - Sub-clause 21(d) be amended by substituting the words “village administrator” with “ward administrator.”
  - Under sub-clause 21(d), specify that the faith-based groups be operating within the area of operation of the committee.
  - Under sub-clause 21(c) and (d)- Specify that it is a representative of each listed category.
- n) Clause 22 on Functions of Project Identification and Implementation Committee- sub-clause 22(d) be redrafted to read “supervise and report to the county technical committee on project implementation” For clarity.
- o) Clause 25 on preparation of work plans- sub-clause 25(4) be deleted since it is a repetition of sub clause 25(3).
- p) Clause 27 on quarterly reports on projects and disbursements- For clarity since there are many Commissions in Kenya, the term “Commission” be written in full to mean “Commission on Revenue Allocation.”

The Commission further made the following general comments-

- a) There is need to specify at what level the various committees are established under the Bill for clarity.
- b) The Bill is silent on compensation of committees. This should be indicated to be from the 3% administrative costs of the Board.
- c) Add a new Board function to establish all the technical committees as opposed to it being done by the County Commissioner. Additionally, include a monitoring and evaluation function for the Board.
- d) The Bill is silent on the flow of funds and procurement. The county technical committee should open the special purpose accounts with signatories being the relevant CEC. Sub County Technical Committee to carry out procurement and issue certificates.

**MIN/SEN/SCF&B/307/2023**      **ADJOURNMENT**

There being no other business the meeting was adjourned at 13.20 pm. The next meeting is to be held on Thursday, 8<sup>th</sup> June 2023 at 10.00 a.m.

SIGNATURE..........DATE.....20/6/2023.....  
**SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP**  
**(CHAIRPERSON)**



**MINUTES OF THE FIFTY-FIFTH MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON TUESDAY, 6<sup>TH</sup> JUNE, 2023 AT THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDINGS FROM 10.00 A.M.**

**PRESENT**

- |   |   |                         |
|---|---|-------------------------|
| 1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP | - | <b>Chairperson</b>      |
| 2. Sen. Maureen Tabitha Mutinda, MP       | - | <b>Vice-Chairperson</b> |
| 3. Sen. (Dr.) Boni Khalwale, CBS, MP      | - | Member                  |
| 4. Sen. Mohamed Faki Mwinyihaji, MP       | - | Member                  |
| 5. Sen. Richard Momoima Onyonka, MP       | - | Member                  |
| 6. Sen. Shakila Abdalla Mohamed, MP       | - | Member                  |

**ABSENT WITH APOLOGY**

- |                                     |   |        |
|-------------------------------------|---|--------|
| 1. Sen. Joyce Chepkoech Korir, MP   | - | Member |
| 2. Sen. Tabitha Karanja Keroche, MP | - | Member |
| 3. Sen. Eddy Gicheru Oketch, MP     | - | Member |

**SECRETARIAT**

- |                            |   |                         |
|----------------------------|---|-------------------------|
| 1. Mr. Christopher Gitonga | - | Clerk Assistant         |
| 2. Ms. Beverlyne Chivadika | - | Clerk Assistant         |
| 3. Ms. Lucy Radoli         | - | Legal Counsel           |
| 4. Ms. Joan Mahinda        | - | Researcher              |
| 5. Mr. Sekento Tonkei      | - | Researcher              |
| 6. Mr. Barasa Nandemu      | - | Media Relations Officer |
| 7. Mr. Daniel Kirwa        | - | Serjeant-at-arms        |
| 8. Mr. Johnstone Simiyu    | - | Audio Officer           |
| 9. Mr. Jeff Mburu          | - | Attachee                |

**COUNCIL OF GOVERNORS**

- |                                     |   |
|-------------------------------------|---|
| 1. Hon. FCPA Fernandes Barasa, OGW- | Governor, Kakamega County/<br>Chairperson |
| 2. Hon. (Dr.) Julius Malombe, EGH - | Governor, Kitui County                    |

- |                                |   |                           |
|--------------------------------|---|---------------------------|
| 3. Hon. Mutula Kilonzo JR, CBS | - | Governor, Makueni County  |
| 4. Hon. Nathif Jama, EGH       | - | Governor, Garissa County  |
| 5. Hon. (Dr.) Mohamud Mohammed | - | Governor, Marsabit County |
| 6. Hon. Jonathan Lati Lelelit  | - | Governor, Samburu County  |
| 7. Hon. (Dr.) Ali Maalim       | - | Governor, Mandera County  |
| 8. Mr. Stephen Momanyi         | - | Secretariat               |

**MIN/SEN/SCF&B/298/2023**      **PRELIMINARIES**

The Vice-Chairperson called the meeting to order at 10:30 a.m. This was followed by a word of prayer. Thereafter, a round of introduction.

**MIN/SEN/SCF&B/299/2023**      **ADOPTION OF THE AGENDA**

The agenda was adopted after being proposed by Sen. Richard Momoima Onyonka, MP, and seconded by Sen. Shakila Abdalla Mohamed, MP, as listed below-

1. Prayer;
2. Introduction;
3. Adoption of the Agenda;
4. Confirmation of Minutes of the 52<sup>nd</sup>, 53<sup>rd</sup>, and 54<sup>th</sup> sittings;
5. Matters arising from minutes of previous meetings,
6. Meeting with CoG to deliberate on the Equalization Fund (Administration) Bill, 2023 (Senate Bills No. 14 of 2023) (*Committee Paper No. 43(A)*)
7. Any Other Business; and
8. Date of the Next Meeting and Adjournment.

**MIN/SEN/SCF&B/300/2023**      **CONFIRMATION OF MINUTES**

Confirmation of minutes of the 52<sup>nd</sup>, 53<sup>rd</sup>, and 54<sup>th</sup> sittings was deferred.

**MIN/SEN/SCF&B/301/2023**      **MEETING WITH COUNCIL OF GOVERNORS  
TO DELIBERATE ON THE EQUALIZATION  
FUND (ADMINISTRATION) BILL, 2023**

Upon invitation, the Council of Governors presented the following specific concerns on the Equalization Fund (Administration) Bill, 2023-

- a) There is need for the Bill to clearly distinguish (In Parts) the process to be followed when using the Fund directly and when using it indirectly.

- b) Having witnessed the inefficiencies associated with the direct use of the Fund, the Council strongly opines that going forward, the Equalisation Fund should only be used indirectly as conditional grants to Counties.
- c) Proposals on Part III-Establishment of Advisory Board
- Clause 6(1)(f) be amended to read “three persons nominated by the Council of Governors drawn from areas identified as marginalized by the Commission on Revenue Allocation”. This is to ensure adequate representation of the county governments on the Equalization Fund Advisory Board vis-à-vis the national government representation.
  - Clause 6(3) be deleted since it contradicts Section 8.
  - New Clause 7 be inserted to provide for meetings of the Board- Frequency of meetings, notice of meetings, quorum of conduct of business, chairperson of the meetings, voting, procedure for meetings and attendance of other persons to meetings of the Board.
- d) Sub-clauses 10(1)(g), 12(a) and (c), and 15(1)(d) be amended by deleting the words “these guidelines” and replace thereof with “this Act”. This is an Act of Parliament and not Guidelines.
- e) Proposal on Part IV on County Technical Committees-Clauses 17-22
- Clearly indicate that clauses 17-22 only apply to the direct use of the Fund. This is because there already exists a framework for management of conditional grants (indirect use of the Fund) which does not envision such committees.
  - Secondly, clause 17 on establishment of County Technical Committees of be amended by deleting the words “County Commissioner” and substitute therefore with the words “Governor”.
  - Sub-Clause 17(a) be amended to read as “Chairperson who shall be the County Governor or a person designated by the Governor in writing”.
  - Sub-Clause 17(f) be deleted since it is a repetition of sub-clause 17 (d).
  - Clauses 19 and 20 on establishment of sub-county committees be deleted. This is because it is duplicitous and that the functions of the sub-county committee can be performed by the County technical committee.
- f) Proposal on Clauses 23-28
- That there is a need to distinguish (in parts) the roles of the County Executive Committee Member responsible for matters relating to finance in the identification of projects and related processes to avoid duplication of roles.
  - Clause 24 be amended to read as follows: “The County Executive Committee Member responsible for matters relating to finance shall submit work plans to the Board for approval”. This is attributed to the fact that the CECM, Finance is only responsible to the Board and not the technical committee which has different reporting lines as per the Bill.

The Committee made the following observations-

- a) There is need to review the administrative costs and expenses of the Advisory Board provided for under clause 13(3). Three percent of the approved annual allocation to the Fund may be a surplus.
- b) The Equalisation Fund Advisory Board has more representation from the National Government and needs review.
- c) The Committee unanimously agreed with the CoG that to ensure efficient utilization, Equalisation Fund should only be used indirectly as conditional grants to counties.
- d) That CRA should provide a clear definition of the term “marginalized areas” in development of the Third Policy on Marginalisation.
- e) There is need to review the provisions on the roles of County Commissioner in the Bill. The proposed provisions neglect the vital role of county governments in project identification, approval and implementation of projects and programmes financed by the Fund.
- f) There is need to amend sub clause 6(1)(c) to include the words “or a representative designated in writing” to represent the Principal Secretary responsible for matters relating to finance when unavailable.

**MIN/SEN/SCF&B/302/2023**      **ADJOURNMENT**

There being no other business the meeting was adjourned at 12:00 p.m. The next meeting is to be held on Tuesday, 6<sup>th</sup> June 2023 at 12:10 p.m.

SIGNATURE..........DATE...13/06/2023.....

**SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP**  
**(CHAIRPERSON)**



**MINUTES OF THE FIFTY-FIRST MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON THURSDAY, 25<sup>TH</sup> MAY, 2023 AT THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDINGS FROM 10.00 A.M.**

**PRESENT**

- |                                      |   |                         |
|--------------------------------------|---|-------------------------|
| 1. Sen. Maureen Tabitha Mutinda, MP  | - | <b>Vice-Chairperson</b> |
| 2. Sen. (Dr.) Boni Khalwale, CBS, MP | - | Member                  |
| 3. Sen. Mohamed Faki Mwinyihaji, MP  | - | Member                  |
| 4. Sen. Richard Momoima Onyonka, MP  | - | Member                  |
| 5. Sen. Shakila Abdalla Mohamed, MP  | - | Member                  |
| 6. Sen. Eddy Gicheru Oketch, MP      | - | Member                  |

**ABSENT WITH APOLOGY**

- |   |   |                    |
|---|---|--------------------|
| 1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP | - | <b>Chairperson</b> |
| 2. Sen. Joyce Chepkoech Korir, MP         | - | Member             |
| 3. Sen. Tabitha Karanja Keroche, MP       | - | Member             |

**SECRETARIAT**

- |                            |   |                         |
|----------------------------|---|-------------------------|
| 1. Mr. Christopher Gitonga | - | Clerk Assistant         |
| 2. Ms. Beverlyne Chivadika | - | Clerk Assistant         |
| 3. Ms. Lucy Makara         | - | Deputy Director, PBO    |
| 4. Ms. Lucy Radoli         | - | Legal Counsel           |
| 5. Ms. Keziah Muthama      | - | Fiscal Analyst          |
| 6. Mr. Kioko Kiminza       | - | Fiscal Analyst          |
| 7. Ms. Joan Mahinda        | - | Researcher              |
| 8. Mr. Sekento Tonkei      | - | Researcher              |
| 9. Mr. Barasa Nandemu      | - | Media Relations Officer |
| 10. Mr. Fredick Ouma       | - | Serjeant-at-arms        |
| 11. Mr. Elijah Ichwara     | - | Audio Officer           |
| 12. Mr. Jeff M Mburu       | - | Attachee                |

**MIN/SEN/SCF&B/271/2023**

**PRELIMINARIES**

The Vice-Chairperson called the meeting to order at 10: 29 a.m. This was followed by

a word of prayer. Thereafter, a round of introduction.

**MIN/SEN/SCF&B/272/2023**      **ADOPTION OF THE AGENDA**

The agenda was adopted after it was proposed by Sen. Shakila Abdalla Mohamed, MP, and seconded by Sen. Mohamed Faki Mwinyihaji, MP, as listed below-

1. Prayer;
2. Introduction;
3. Adoption of the Agenda;
4. Confirmation of Minutes of the 39<sup>th</sup>, 40<sup>th</sup>, 41<sup>st</sup>, 43<sup>rd</sup>, 44<sup>th</sup>, 45<sup>th</sup>, 46<sup>th</sup>, 47<sup>th</sup>, 48<sup>th</sup>, 49<sup>th</sup>, and 50<sup>th</sup> sittings;
5. Consideration of the Equalization Fund (Administration) Bill, 2023 (Senate Bills No. 14 of 2023) (*Committee Paper No. 43*)
6. Consideration of the draft County Governments Additional Allocations Bill, 2023 (*Committee Paper No. 44*)
7. Any Other Business; and
8. Date of the Next Meeting and Adjournment.

**MIN/SEN/SCF&B/273/2023**      **CONFIRMATION OF MINUTES**

Confirmation of minutes of the 39<sup>th</sup>, 40<sup>th</sup>, 41<sup>st</sup>, 43<sup>rd</sup>, 44<sup>th</sup>, 45<sup>th</sup>, 46<sup>th</sup>, 47<sup>th</sup>, 48<sup>th</sup>, 49<sup>th</sup>, and 50<sup>th</sup> sittings was deferred.

**MIN/SEN/SCF&B/274/2023**      **CONSIDERATION OF THE EQUALIZATION  
FUND (ADMINISTRATION) BILL, 2023  
(SENATE BILLS NO. 14 OF 2023)  
(COMMITTEE PAPER NO.43)**

The Committee considered Paper No. 43, on Equalization Fund (Administration) Bill, 2023.

The Committee noted the contents of the Paper and after deliberations, the Committee was informed that Commission on Revenue Allocation, Controller of Budget and the Cabinet Secretary, National Treasury and Economic Planning had been invited to a meeting of the Committee to deliberate on the Bill.

The Committee recommended that the stakeholders who participated during the consideration of the Public Finance Management (Equalization Fund Administration) Regulations, 2021 be invited to submit views on the Bill.

The Committee considered Paper No. 44, draft County Governments Additional Allocations Bill (CGAAB), 2023.


The Committee noted with concern that-

- a) the brief by the Parliamentary Budget Office was inadequate to enable the Committee to make a resolution. For instance, the brief did not provide a list of the counties which would benefit from various additional allocations. The PBO was directed to include beneficiary counties and provide rationale or justification for each additional allocation.
- b) there was need for the relevant Committee of the Senate to carry out impact assessment on implementation of additional allocations to ascertain the implementation status of projects and programmes funded via previous allocations
- c) whereas the County Governments Additional Allocation Bill originated from the Senate, there were indications that the National Assembly intended to publish a similar Bill.

After deliberations, the Committee resolved the following-

- a) Consideration of the draft County Governments Additional Allocations Bill, 2023 be deferred to Tuesday, 30<sup>th</sup> May, 2023 to allow the Parliamentary Budget Office to collate the necessary information concerning additional allocations for FY 2023/24;
- b) An elaborate draft of the County Government Additional Allocations Bill, 2023 be presented to the Committee during the meeting scheduled on Tuesday, 30<sup>th</sup> May, 2023; and
- c) Resolution on the publication of the Bill by the Senate bill will be considered during the meeting on 30<sup>th</sup> May, 2023.

There being no other business the meeting was adjourned at 12:53 p.m. Next meeting is to be held on Tuesday, 30<sup>th</sup> May, 2023 at 9:00 a.m.

SIGNATURE  DATE 31/05/2023

SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP  
(CHAIRPERSON)



REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | SECOND SESSION

THE SENATE

**INVITATION FOR SUBMISSION OF MEMORANDA**

At the sitting of the Senate held on Thursday, 4<sup>th</sup> May, 2023, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P. O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi; or emailed to [clerk.senate@parliament.go.ke](mailto:clerk.senate@parliament.go.ke) and copied to the email addresses of the respective Committee indicated at the fourth column below; to be received on or before **Monday, 22<sup>nd</sup> May, 2023 at 5.00 p.m.**

	<b>Bill</b>	<b>Committee Referred To</b>	<b>Email Address</b>
a)	The Agriculture and Food Authority (Amendment) Bill (Senate Bills No. 13 of 2023)	Standing Committee on Agriculture, Livestock and Fisheries	<a href="mailto:agriculturefcommittee.senate@parliament.go.ke">agriculturefcommittee.senate@parliament.go.ke</a>
b)	The Equalization Fund (Administration) Bill (Senate Bills No.14 of 2023)	Standing Committee on Finance and Budget	<a href="mailto:financebudgetcomm.senate@parliament.go.ke">financebudgetcomm.senate@parliament.go.ke</a>
c)	The Constitution of Kenya (Amendment) Bill (Senate Bills No.15 of 2023)	Standing Committee on Justice, Legal Affairs and Human Rights	<a href="mailto:senatejlahrc@parliament.go.ke">senatejlahrc@parliament.go.ke</a>

The Bills may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

**J.M. NYEGENYE, CBS,**  
**CLERK OF THE SENATE.**



**REPUBLIC OF KENYA**

**THE NATIONAL TREASURY & ECONOMIC PLANNING**

**SUBMISSIONS BY THE CABINET SECRETARY, NATIONAL  
TREASURY & PLANNING TO THE SENATE STANDING  
COMMITTEE ON FINANCE AND BUDGET ON THE  
EQUALIZATION FUND (ADMINISTRATION) BILL, 2023  
(SENATE BILLS NO. 14 OF 2023).**

**7<sup>th</sup> JUNE, 2023**

Reference is made to your letter Ref. No. **SEN/DSEC/F&B/CORR/2023/67 (c)** dated 23<sup>rd</sup> May, 2023 inviting the National Treasury and Economic Planning to a meeting of the Standing Committee on Finance and Budget on the Equalization Fund (Administration) Bill, 2023.

The following are the comments from the National Treasury and Economic Planning:

### **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 13<sup>th</sup> 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; Mandera; 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: -



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Ref No: NT/EFAB/TECH/PARL/01/'A'/(31)

2<sup>nd</sup> June, 2023

**Mr. J. M. Nyegenye, CBS,**  
Clerk of the Senate,  
The Senate  
Parliament Buildings  
NAIROBI.

Dear *Mr. Nyegenye,*

**RE: INVITATION TO A MEETING TO SUBMIT VIEWS ON THE EQUALIZATION  
FUND (ADMINISTRATION) BILL, 2023 (SENATE BILLS NO 14 OF 2023)**

Reference is made to your letter Ref: **SEN/DSEC/F&B/CORR/2023/67(c)** dated 23<sup>rd</sup> May, 2023 on the above subject matter. I have been invited to a meeting with the Senate Finance & Budget Committee to submit our representations on the Equalization Fund (Administration) Bill, 2023 (Senate Bills No 14 of 2023).

Unfortunately, the National Treasury is scheduled to appear before the Departmental Committee on Finance and National Planning to submit our views on the Finance Bill, 2023 on the same date.

The purpose of this letter is to let you know of this position and to seek your indulgence to request the Committee to accept our written Submission hereby attached.

Enclosed herein, find the following for your reference and necessary action: -

1. National Treasury and Economic Planning representations/views on the Equalization Fund (Administration) Bill, 2023 (Senate Bills No 14 OF 2023)
2. The Equalization Fund Status Report;
3. The Public Finance Management (Equalization Fund Administration) Regulations, 2021;
4. The Attorney General's Advisory on the Court ruling on the petition no 272 of 2016
5. The High court ruling on the petition no. 272 of 2016.

Thank you for your continued support.

Yours



**Njuguna Ndung'u, CBS**  
**CABINET SECRETARY**

Encls.

Copy to: **Dr. Chris Kiptoo, CBS**  
Principal Secretary  
National Treasury  
**NAIROBI**

**Amb (Eng) Mahboub M. Maalim, CBS, OGW**  
Chairman  
Equalisation Fund Advisory Board  
**NAIROBI**

**Sen. Ali Roba Ibrahim**  
Chairman  
Senate Standing Committee on Finance and Budget  
The Senate  
Parliament Buildings  
**NAIROBI.**



- 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 13<sup>th</sup> 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 2<sup>nd</sup> 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 29<sup>th</sup> April, 2021 and approved by Parliament paving way for the operationalization of the Fund.

## **II. Current Status**

10. With the passage of the Regulations;

- 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 has initiated full implementation and facilitated completion of projects under the First Marginalization Policy and payment of pending bills under the First Policy is ongoing.
- c) The County Technical Committee and all other committees as stipulated in the Regulations have been established in the 34 beneficiary counties.
- d) The Equalization Fund Appropriation Bill 2022 was prepared and submitted to Parliament for consideration and approval. The Bill was published on 31<sup>st</sup> January 2023 and captures KSh 13,893,791,644 which comprises of KSh 6,825,317,433 and KSh 7,068,474,211 for FY 2021/22 and FY 2022/23 respectively for implementation of Second Policy on Marginalization.
- e) Project identification and implementation under Second Policy on marginalization will commence immediately after the approval of the Equalisation Fund Appropriation Bill 2022.
- f) Preparation of handing over framework of projects to county governments is ongoing.

## **III. Equalization Fund Bill 2022 (National Assembly Bill No. 47 of 2022)**

11. In February, 2023, the National Treasury and Economic Planning received a request from the Clerk of the National Assembly to submit a comprehensive brief on the representations of the Equalization Fund Bill 2022 (National Assembly Bill No. 47 of 2022) (hereinafter EF Bill 2022).

12. The Objective of the Bill is to:

- a) Operationalize the Equalization Fund as established under Article 204 of the Constitution; and

- b) Establish a board to administer the Fund in instances where the Fund is directly used for the provision of basic services to marginalized areas.
13. The Bill sponsored by Hon. Kassait Kamket, MP underwent 1<sup>st</sup> Reading on 30<sup>th</sup> November, 2022 and committed to the Departmental Committee on Finance and National Planning.
14. The National Treasury and Economic Planning urged the National Assembly to reject or refer the EF Bill 2022 back to the sponsor with recommendation that the Bill is subjected to further and wider scrutiny by stakeholders based on the following:
- a) That the EF Bill 2022 was overtaken by events since there is already an administrative, governance and legal framework in place for the management of the Equalization Fund;
  - b) There is in place a board, the Equalization Fund Advisory Board and Secretariat that is administering the Fund;
  - c) The Bill does not disclose any mischief that it seeks to remedy or cure in the prevailing implementation structure; and
  - d) The constituencies are not recognized as planning or administrative units outside the confines of the county governments structure in the devolved system of governance.

#### **IV. The Equalization Fund (Administration) Bill, 2023**

15. 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).
16. 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.
17. We have reviewed the EF Bill 2023 and comment 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 27<sup>th</sup> August, 2010. Therefore, the Fund would lapse on 26<sup>th</sup> 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.
18. 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.

19. Therefore, the National Treasury and Economic Planning urges you to consider to reject the Bill or refer it back to the sponsor with recommendations that the Bill be subjected to further consultations with stakeholders before reconsideration.

A handwritten signature in black ink, appearing to read 'Njuguna Ndung'u', with a stylized flourish at the end.

**NJUGUNA NDUNG'U, CBS**  
**CABINET SECRETARY**



**COUNCIL OF GOVERNORS**

**LEGISLATIVE MEMORANDUM ON THE EQUALISATION FUND (ADMINISTRATION) BILL, (SENATE BILLS NO. 16 OF 2023)**

**TO**

**THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET**

**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. Article 204 (3)(b) of the Constitution of Kenya, 2010, 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 Commission on Revenue Allocation (CRA) in their First Policy on the Criteria for Identifying Marginalised Areas and Sharing of the Equalisation Fund, recommended **that the Fund should be spent indirectly as conditional grants to marginalised counties**. This is because county governments are better placed to target expenditure programmes to marginalized communities within the counties. The Commission further defined 'Marginalised areas' to mean Marginalised Counties. However, the First Policy was implemented directly. Having witnessed the inefficiencies associated with the direct use of the fund, the Council strongly opines that going forward, the Equalisation Fund should only be used indirectly as conditional grants to Counties.



## COUNCIL OF GOVERNORS

2. **On the management of the Fund:** There already exists an elaborate framework on the management of Conditional grants issued to Counties. However, we note that the Bill has proposed a framework similar to Public Finance Management (Equalization Fund Administration) Regulations, 2021 that exhibited ineffectiveness and inefficiencies.

We therefore urge the Senate to amend the Bill to ensure that the Fund is used in accordance with the existing framework on management of Conditional grants. That is; The funds shall be utilized as conditional grants to the affected counties in accordance with the Division of Revenue Act and the Equalisation Fund Appropriation Act (in the place of the County Governments Additional Allocations Act) for the respective financial year. Under such a framework, Funds are allocated and disbursed to Counties for implementation of Projects subject to agreed upon conditions between the County Governments and the Equalisation Fund Advisory Board.

3. There is need for the Bill to clearly distinguish (In Parts) the process to be followed when using the Fund directly and when using it indirectly.
4. It is important to note that after 13 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 Ksh.54,035,184,050 (excluding FY 2023/24 allocation), out of which Ksh.26,293,791.644 has been approved and appropriated by Parliament. The Council therefore requests the Senate to fast track the approval and subsequent appropriation of the remaining amount of the Fund entitled to County governments.
5. There is need for the Bill to provide for meetings of the Board.
6. There is need for the committees established under the Bill to consider the inherent role of county governments in administrating projects and programmes facilitated by the Fund as a majority are devolved functions.



**COUNCIL OF GOVERNORS**

**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
<p><b>PART III – ESTABLISHMENT OF ADVISORY BOARD</b></p>	<p>6. (1) 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</p>	<p>Amend Section 6 (1)(f) to read as follows:</p> <p>(f) <b>three persons</b> nominated by the Council of Governors drawn from areas identified as marginalized by the Commission on Revenue Allocation;</p>	<p>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 as per the Fourth Schedule to the Constitution. Given that implementation will take place in marginalized areas identified within Counties, there is need for adequate representation on the devolved units. This would bolster the county government's engagement in the administration of the Fund and its associated services.</p>



**COUNCIL OF GOVERNORS**

	<p>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) one person 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</p>		
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**COUNCIL OF GOVERNORS**

	<p>a representative designated in writing;</p> <p>(h) the Controller of Budget or a representative designated in writing;</p> <p>(i) the Chief Executive Officer who shall be secretary of the Board.</p>		
	<p>6 (3) A person appointed under section (1)(c) and (f) shall serve for a term of three years renewable for one further term.</p>	<p>Delete Section 6 (3).</p>	<p>This provision contradicts Section 8</p>
<p><b>New Clause Meetings of the Board</b></p>	<p>The Bill has not provided for meetings of the Board</p>	<p>7 (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the dates of the next meeting.</p> <p>(2) Unless three quarters</p>	



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		<p>of the total members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board.</p> <p>(3) The quorum for the conduct of the business of the Board shall be five members, of whom the majority of shall be from amongst the non ex officio members.</p> <p>(4) The Chairperson shall preside at every meeting of the Board at which he or she is present but in his or her absence, the members present shall elect one of their number who shall, with respect to</p>	
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**COUNCIL OF GOVERNORS**

		<p>that meeting and the business transacted, have all the powers of the Chairperson.</p> <p>(5) Unless a unanimous decision is reached a decision on any matter before the Board shall be reached by voting.</p> <p>(6) Subject to sub-section (3), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.</p> <p>(7) Subject to the provisions of this Section, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons as its meetings and may make</p>	
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**COUNCIL OF GOVERNORS**

		standing orders in respect thereof. 12. The Board Secretary shall cause minutes of all proceedings of meetings of the Board to be entered in books for that purpose.	
<b>Sections 10 (1)(g), 12 (a) &amp; (c), 15 (1)(d)</b>	These Sections have refer to <b>“these Guidelines”</b>	Delete the words “these Guidelines” and replace therefor with <b>“this Act”</b> .	This is an Act of Parliament and not Guidelines.
<b>PART IV – COUNTY TECHNICAL COMMITTEES</b>  <b>Clauses 17-22</b>	Part IV establishes County Technical Committees	For purposes of this Act and in accordance with Article 204 (6) of the Constitution, clearly indicate that Clauses 17-22 only apply to the direct use of the Fund.	There already exists a framework for management of conditional grants which does not envision such committees in the case of indirect use of the Fund as conditional grants to Counties.
	17. Each County Commissioner of an eligible county shall establish and convene a county technical committee	17. Each <b>Governor</b> of an eligible county shall establish and convene a county technical committee comprising of-	The proposed composition of the technical committee disregards the inherent role of county governments in administrating projects and programmes facilitated by the Fund. Instead, it assigns these duties to the National



**COUNCIL OF GOVERNORS**

	<p>comprising of-</p> <p>(a) chairperson who shall be the County Commissioner;</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;</p> <p>(e) a public officer representing the implementing sector with prioritized projects</p> <p>(f) representative of the relevant County Assembly;</p>	<p>(a) chairperson who shall be the County <b>Governor</b> or a <b>person designated by the Governor in writing</b>;</p> <p>Delete Section 17 (f)</p>	<p>Government via the County Commissioner, thereby encroaching on the constitutionally assigned responsibilities of the county governments.</p> <p>The same has been provided for under Section 17 (d)</p>
<p><b>Clauses 19 and 20</b></p>	<p>19 Establishment of the Sub-county</p>	<p>Delete Clauses 19 and 20</p>	<p>The establishment of the Sub- County committee is unnecessary and duplicitous.</p>



**COUNCIL OF GOVERNORS**

	<p>technical committee.          Clause 20 - Functions of the sub-county technical committee.</p>		<p>These functions can be performed by the County technical committee.</p>
<p><b>Clauses 23 - 28</b></p>	<p>Provides for the functions of the CECM for Finance</p>	<p>There is need to distinguish (in parts) the roles of the County Executive Committee Member responsible for matters relating to finance.in identification of projects and related processes to avoid duplication of roles.</p>	<p>In case of indirect use of the Fund as conditional grants to counties there only needs to be a framework between the Board and the County Executive Committee Member responsible for matters relating to finance. as opposed to the technical committees convened by the County Commissioner.</p>
	<p>24. The County Executive Committee Member responsible for matters relating to finance shall submit workplans through the respective</p>	<p>Amend as follows:          24. The County Executive Committee Member responsible for matters relating to finance shall submit workplans to the Board for approval.</p>	<p>The County Executive Committee Member responsible for matters relating to finance is only responsible to the Board and not the technical committee which has different reporting lines as per the Bill.</p>



**COUNCIL OF GOVERNORS**

	county technical committee to the Board for approval.		



## COMMENTARY ON THE EQUALIZATION FUND (ADMINISTRATION) BILL, 2023

In accordance with the requirements of Article 205 of the Constitution, the Commission on Revenue Allocation has considered the Equalisation Fund (Administration) Bill 2023 and recommends as follows-

NO.	CLAUSE	RECOMMENDATION	JUSTIFICATION
1.	<b>Clause 2 Interpretation</b>	Add definition of the following phrase in its alphabetical sequence-  <i>'First Policy' means the first policy determined by the Commission on Revenue Allocation under Article 216(4) of the Constitution in identifying marginalized areas for purposes of Article 204(2) of the Constitution</i>	The phrase 'First Policy' is referenced in the Bill but not defined hence the need to clarify.
		In the definition of the phrase ' <i>unutilized balance</i> ' under paragraph (a) delete the word ' <b>and</b> ' after the semi colon.	To correct an editorial error given there is a list that follows the content.

		<p><b>In the definition of the word “revenue”</b>  This has the meaning assigned in the CRA Act. The CRA Act excludes revenues referred to under Article 206(1)(a)(b) and Article 209(4) of the Constitution. This definition also contradicts Clause 4 of the Bill.</p> <p><b>Recommendation:</b> Revenue should refer to revenue as defined in Article 204(1), which refers “to <b>all</b> the revenue collected by the national government each year...”.</p>	To align with the Constitution
2.	<b>Clause 3 Purpose</b>	<p>Clause 3 (b) provides for completion of ongoing projects under the First and Second policies.</p> <p><i>Recommendation: Add “<b>and all other subsequent policies determined by the Commission on Revenue Allocation for purposes of Article 204(2)</b>”</i></p>	To cater for future policies

		<p>Clause 3 (d) suspends the application of Article 204(7) of the Constitution and extends the pendency of the Fund. <b>Recommendation:</b> Delete. The Fund is yet to be fully operationalised. Given that allocation to the Fund remains in the Fund, and that the Fund has eight more years for its implementation, a proposal to extend the Fund is not currently justifiable.</p> <p>Also delete clause 32 which extends the constitutional term.</p>	For practicability
3.	<b>Clause 6 Establishment of Equalisation Fund Advisory Board</b>	<p>Clause 6 (3) refers to persons appointed under Clause 6 (1)(c) and (f).</p> <p><i>Recommendation: redraft to align with provisions under Clause 6 (1)(d), (e) and (f)</i></p>	For coherence

4.	<b>Clause 8 Tenure of office</b>	<p>This clause provides for a non-renewable term of six years for persons appointed under Clause 6 (1)(d), (e) and (f).</p> <p><b>Recommendation.</b> Harmonize with the term under clause 6(3) which provides for a term of three years' renewable once.</p>	
5.	<b>Clause 10 Functions of the Board</b>	<p>Under sub clause 10(1)(c) which provides for the Board to make recommendations on the priority areas requiring financing and implementation in accordance with the workplans considered under <b>section</b> (b) and in line with the recommendations of the Commission on Revenue Allocation</p> <p><i>Recommendations: Firstly, substitute the term 'section (b) with paragraph 10(1) (b). Secondly, specify to whom such recommendations are to be made.</i></p>	For clarity
6.	<b>Clause 11</b>	Under sub clause (1), write the acronym CS in full	For ease of understating given it is undefined.

	<b>Decisions of the Committees of the Board</b>	The marginal note to Clause 11 is incomplete. <b>Recommendation:</b> add the <i>phrase 'Cabinet Secretary'</i> after the existing content	For coherence
7.	<b>Clause 14 Officer administering the Fund</b>	Clause 14 (2)(b) has largely narrowed the technical qualification of the Fund CEO to the area of health. <i>Recommendation: delete skills in health insurance, health financing, health economics, and health care. Additionally, align with 7(c).</i>	For inclusivity purposes
8.	<b>Clause 15 Secretariat</b>	Under clause 15(2)(f)(i) delete the words " <i>have been</i> " after the phrase "Government in marginalised areas" <i>H</i> <i>WAG</i>	To correct a grammatical error
9.	<b>Clause 17 Establishment of county technical committees</b>	Under paragraph (e)- (e) a public officer representing the implementing sector with prioritized projects  <i>Recommendations: redraft to read "not more than four technical officers from ministries relevant to the funding project"</i>	For ease of implementation of the Fund

		Delete paragraph (f). The same content is repeated in (d) which provides a representative from the County Assembly	
	<b>Clause 19</b> <b>Sub county</b> <b>Technical</b> <b>Committee</b>	Add the sub county administrator as member of this committee who shall also serve as secretary to the Committee.	
10.	<b>Clause 20</b>  <b>Functions of the</b> <b>sub-county</b> <b>technical</b> <b>committee</b>	Under paragraph-  i. (c), substitute the word ‘ <b>access</b> ’ with ‘ <b>assess</b> ’  ii. (d) add at the end “ <i>to the County Technical Committee</i> ”. So that it is clear to whom the sub-county technical committee will submit project proposals to.  iii. (e) add the words ‘implementation of’ after ‘monitor’  iv. (f) and (g) <i>delete “and the member of the county executive”</i> . This is because the member of the county executive is the Secretary to the County Technical Committee	For coherence

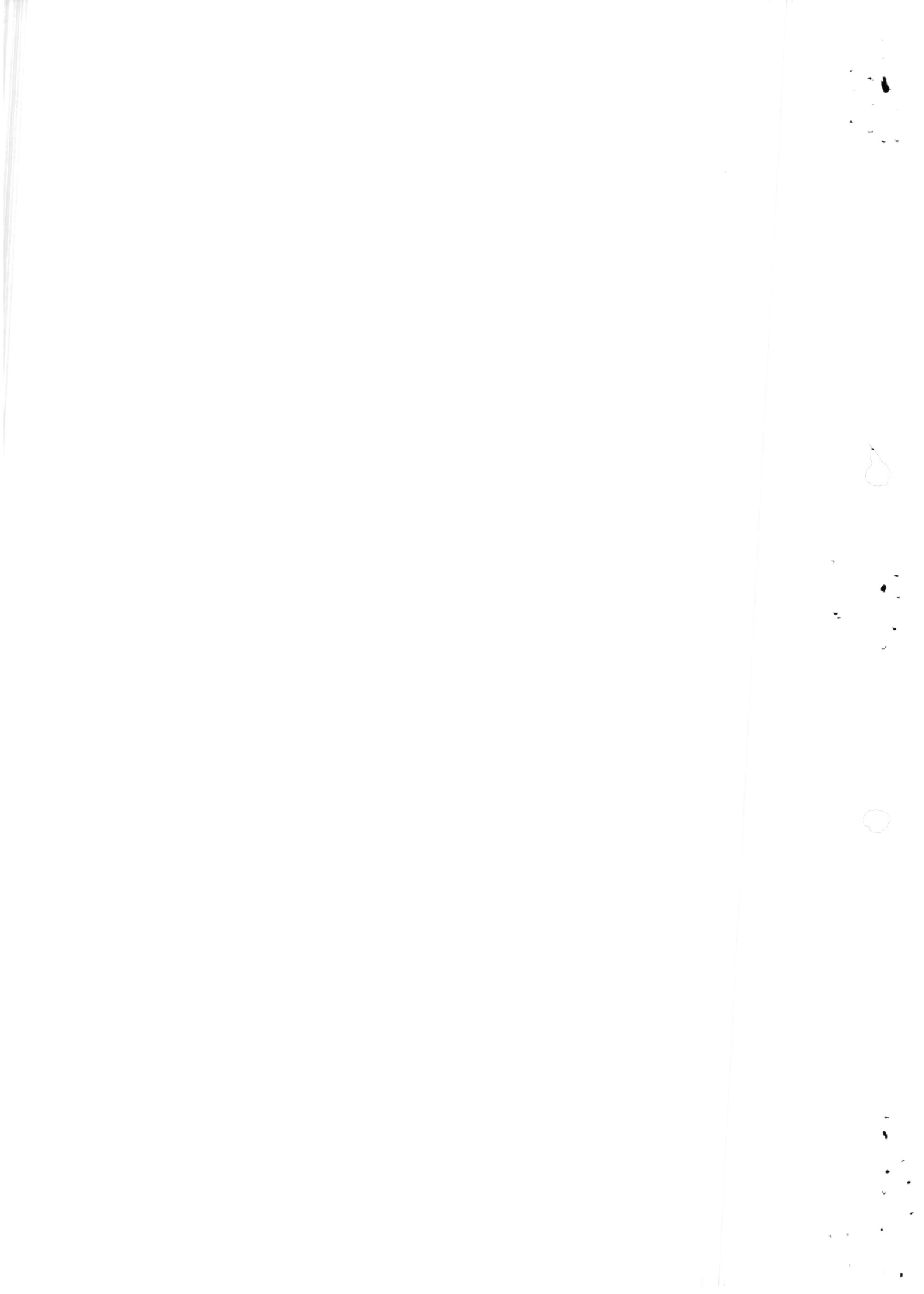
11.	<b>Clause 21</b>  <b>Project Identification and Implementation Committee.</b>	Under paragraph (b) substitute ‘village administrator’ with ‘ward administrator’  Under paragraph (d), which provides for membership of a representative of faith-based groups and non-governmental organisations, specify that such an organization must be <b>operating within the area of operation of the Committee.</b>	For clarity and to ensure the appointee is has in depth knowledge of the area of operation.
		Specify under (c) and (d) that it’s a representative of each category listed	For clarity
12.	<b>Clause 22</b>  <b>Functions of Project Identification and Implementation Committee.</b>	Paragraph (d) provides-  (d) provide oversight on project implementation.  <i>Recommendation: redraft to read “supervise and report to the county technical committee on project implementation”</i>	For clarity

13.	<b>Clause 25</b>  <b>Preparation of workplans</b>	Delete sub clause 25(4).	It is a repetition of sub clause 25(3).
14.	<b>Clause 27</b>  <b>Quarterly reports on projects and disbursements.</b>	Write the term ' <i>Commission</i> ' in full to mean ' <i>Commission on Revenue Allocation.</i> '	To clarify as there are many Commissions in Kenya.

### GENERAL RECOMMENDATIONS

1. The Bill references the phrase '*these Guidelines*' which should be substituted with '*this Act*' e.g. in clauses 10(1)(g), 12(b) and (c), 15(2)(d).
2. There is need to specify at what level the various committees are established under the Bill for clarity.
3. Add a new Board functions to establish all the technical committees as opposed to it being done by the County Commissioner. Additionally, include a monitoring and evaluation function for the Board.

4. The Bill is silent of compensation of the Committees. This should be indicated to be from the 3% administrative costs of the Board
  
5. The Bill is silent on the flow of funds and procurement. We recommend as follows-
  - a) County Technical Committee to open the special purpose accounts and make payments with signatories being the relevant CEC and the County Commissioner
  - b) Sub County Technical Committee to carry out procurement and issue certificates





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NATIONAL GENDER AND EQUALITY COMMISSION

**J. M. Nyegenye, CBS**  
Clerk of the Senate  
Clerk's Chambers  
Parliament Buildings  
P.O. Box 41842-00100  
**NAIROBI**

*clerk.senate@parliament.go.ke*  
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Dear Mr. Nyegenye,

**SUBMISSION OF MEMORANDA ON THE EQUALISATION FUND  
(ADMINISTRATION) BILL 2023**

Reference is made to your call for the submission of memoranda on the Equalisation Fund (Administration) Bill 2023.

The National Gender and Equality Commission (NGEC) is a Constitutional Commission with the mandate of promoting and ensuring gender equality, principles of equality and non-discrimination for all persons in Kenya, with a focus on Special Interest Groups (SIGs) who include women, children, Persons with Disabilities (PWDs), youth, older members of society and minority and marginalized groups.

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 submits the attached memorandum analyzing the proposed Bill and making proposals where necessary.

Yours sincerely,

Betty Sungura, MBS  
**COMMISSION SECRETARY/ CEO**

Encl.

*"Gender Equality and Non-Discrimination"*



	(h) the Controller of Budget or a representative designated in writing; (i) the Chief Executive Officer who shall be secretary of the Board	3. Amend further by inserting a new sub clause 4 as follows-;  4) In making the appointments due regard shall be observed to ensure gender balance.	In compliance with the <i>Mwongozo</i> code and the Constitution.
2.	<b>Clause 9 Vacation of office</b>  9. A member of the Board appointed under section 6(1)(d), (e) and (f) may- (a) resign from office by notice in writing to the Cabinet Secretary; (b) be removed from office by the Cabinet Secretary if the member-;  v) is incapacitated by prolonged physical or mental illness; or	Amend clause 9(b)v) by deleting the same without any replacement.	The provision is prejudicial and discriminatory to persons with disabilities.  The Convention on the Rights of Persons with Disabilities (CRPD) and the Persons with Disabilities Act provide for Reasonable Accommodation which means adjusting or modifying the working environment to accommodate an individual with a proven need.
3.	<b>Clause 11 Decisions of the</b>  11. (1)The CS shall take into account the recommendations of the Board	Amend by completing the subtitle by inserting the word "Board" and also substituting "CS" with "Cabinet Secretary"	The Subtitle is incomplete and the abbreviation "CS" has also been used.
4.	<b>Clause 14</b> Officer administering the Fund.  14. (1) The Chief Executive Officer of the Board shall be the administrator to the Fund and shall be competitively recruited by the Board	Amend by deleting the subtitle " Officer administering the Fund" and substituting it with the following "Administration of the Fund"  Amend further by substituting the words "officer administering the fund" with "the administrator of the fund" whenever the words appear in the Bill.	The Proposed Bill uses the words "administrator of the fund"(7 times) and "Officer administering the fund"(2 times) interchangeably and this brings confusion to the reader.  The use of the single term Administrator of the fund creates consistency in the law

5.	<p><b>Clause 21 Project Identification and Implementation Committee</b></p> <p>The County Commissioner of an eligible county shall establish a Project Identification and Implementation Committee comprising of-</p> <p>(a) the Assistant Sub-County Commissioner who shall be the Chairperson;</p> <p>(b) the village administrators of areas defined by the Commission as marginalised;</p> <p>(c) a representative of women, youth and persons with disabilities from marginalised areas;</p> <p>(d) a representative of faith-based groups and non-governmental organisations.</p>	<p>Amend 21(c ) by substituting the words “a representative of” with the following “ three persons representing”</p> <p>Amend 21(d) by substituting the words “A representative of” with “two persons representing”</p>	<p>The proposed amendments bring clarity to the membership of the project identification and implementation Committee.</p>
6.	<p><b>Clause 22 Functions of Project Identification and Implementation Committee</b></p> <p>The functions of the Project Identification and Implementation Committee shall be to-</p> <p>(a) undertake public participation in beneficiary counties;</p>	<p>Amend clause 22(a) by inserting the word “in accessible formats” after the word “publication”</p>	<p>Accessible formats is for purposes of inclusion of persons who are not literate and those with print disabilities.</p>

