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Mr. Justin Bundi Clerk of the National Assembly P. O. Box 41842-00100 NAIROBI

Mr. J. M. Nyegenye, CBS Clerk of the Senate P. O. Box 41842-00100 NAIROBI

Dear Justin

RE: EQUALIZATION FUND REGULATIONS

The National Treasury has prepared guidelines to operationalize the Equalization Fund established under Article 204(1) of the Constitution. The Interpretations and General Provisions Act (Cap 2) as well as Section 205 of the Public Finance Management Act, 2012 require that such regulations be submitted to Parliament for consideration and approval.

By a copy of this letter, therefore, I am forwarding the Guidelines on the Administration of the Equalization Fund for consideration and approval by Parliament.

Yours

Sincerely

HENRY ROTICH CABINET SECRETARY/THE NATIONAL TREASURY

② Wanyiri

I am sure that these regulations were tabled. Please confirm.

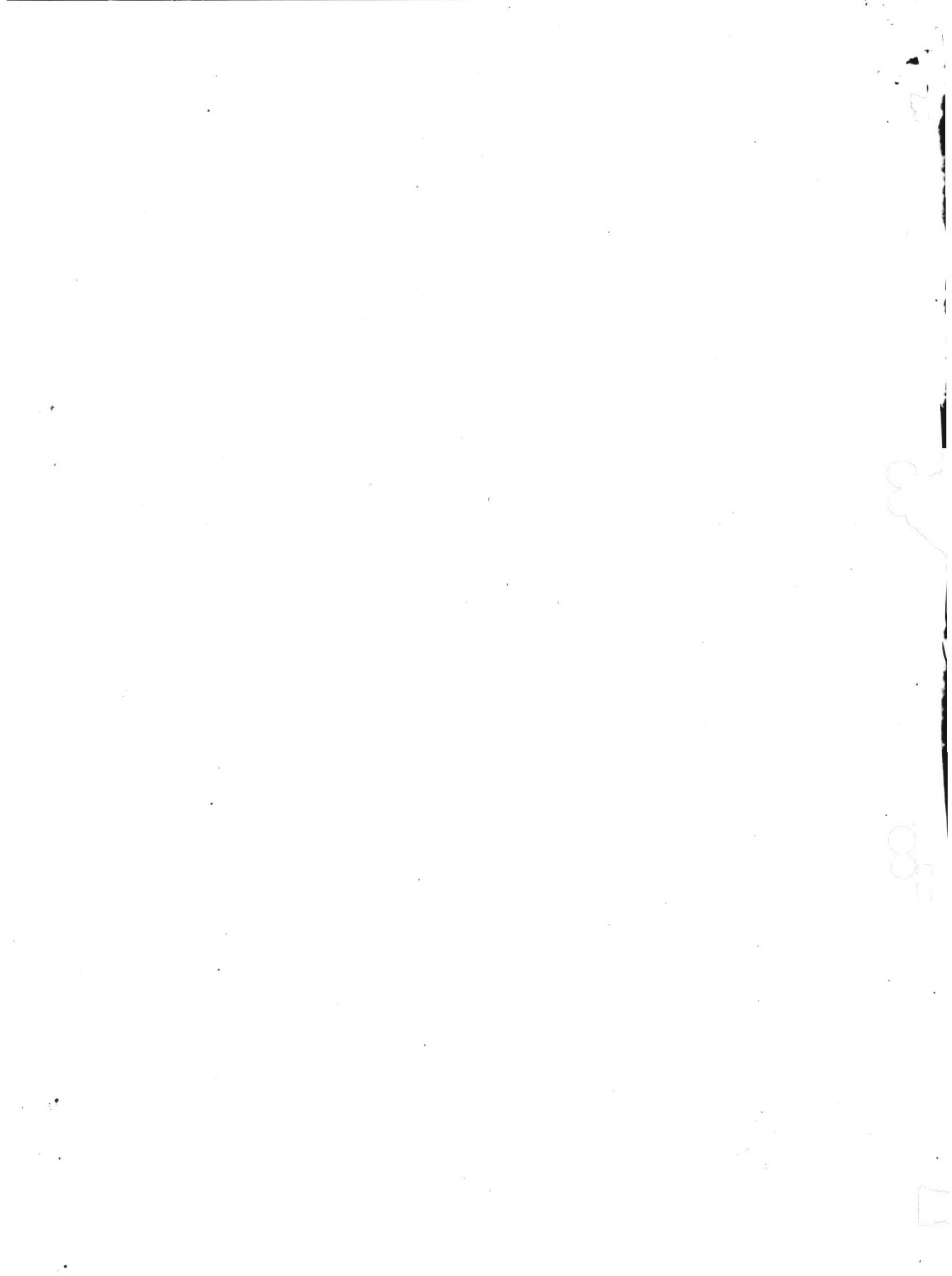
August 28, 2014

L.W. Hf

① Justice Wanyiri for tabling JK 16/2

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August 28, 2014

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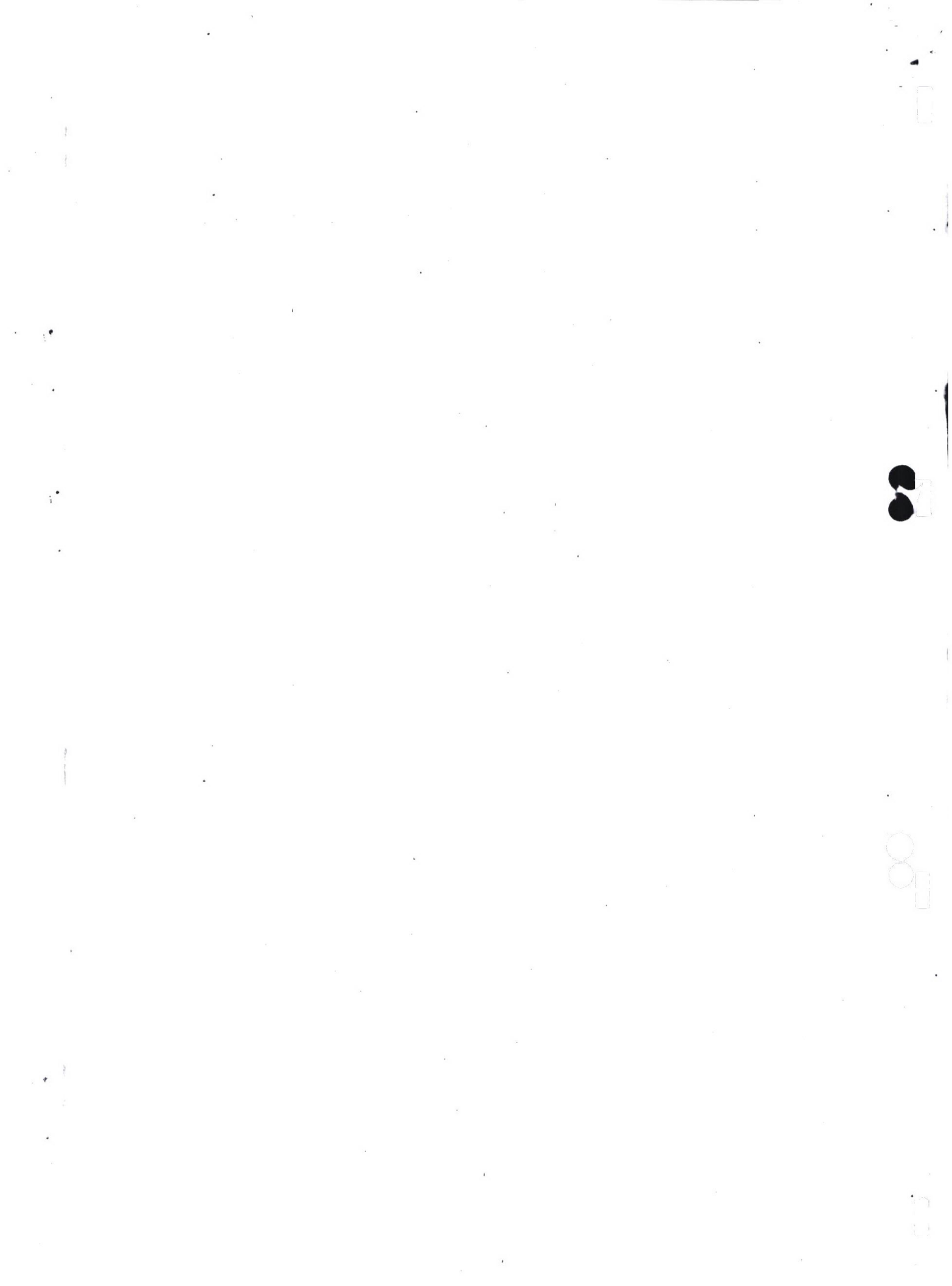
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CABINET SECRETARY/THE NATIONAL TREASURY



GAZETTE NOTICE NO.....

GUIDELINES ON THE ADMINISTRATION OF EQUALIZATION FUND

CONTENTS

- PART I: PRELIMINARY
- PART II: STATEMENT POLICY
- PART III: SOURCES, OBJECTS AND PURPOSE OF THE FUND
- PART IV: MANAGEMENT OF THE FUND
- PART V: PREPARATION AND SUBMISSION OF WORK PLANS
- PART VI: WITHDRAWALS FROM THE FUND
- PART VII: ADMINISTRATION OF THE FUND
- PART VIII: WINDING UP OF THE FUND

SCHEDULE

PART 1—PRELIMINARY

- 1.1 **Title**— Guidelines on the administration of the Equalization Fund established under Article 204 of the Constitution.
- 1.2 **Authorization**—These Guidelines are issued under section 12(2)(k) of the Public Finance Management Act, 2012, which empowers the Cabinet Secretary for finance to issue guidelines to national government entities with respect to financial matters and monitoring their implementation and compliance.
- 1.3 **Definitions**—Terms used in these Guidelines are as defined in the Constitution and the Public Finance Management Act, 2012, except otherwise specified. Other terms used in these Guidelines shall be taken to have the meaning assigned to them hereunder:
 - 1.3.1 "Accounting Standards Board" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;
 - 1.3.2 "Board" means the Equalization Fund Board established under paragraph 4.1 of these Guidelines;
 - 1.3.3 "Cabinet Secretary" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;
 - 1.3.4 "Financial year" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;
 - 1.3.5 "Fund" means the Equalization Fund established under Article 204 of the Constitution;
 - 1.4.5 "officer administering the Fund" means a person nominated by the Principal Secretary responsible for finance and designated by the Cabinet Secretary as the administrator of the Fund;
 - 1.4.6 "revenue" has the meaning assigned to it under the Commission on Revenue Allocation Act, 2012; and
 - 1.4.7 "unutilized balance" means—

1.4.7.1 any amounts not withdrawn from the Fund at the end of financial year; and

1.4.7.2 any amount withdrawn from the Fund for purposes of provision of basic services under an Appropriations Act and not expended at the end of financial year.

PART II — STATEMENT OF POLICY

2.1 Purpose

The purpose of these Guidelines is:

- (i) To specify the sources, object and purpose of the Fund;
- (ii) To provide guidance on the administration and management of the Fund;
- (iii) To establish an Equalization Fund Board to advise the Cabinet Secretary on the proper and effective performance of the Fund;
- (iv) To provide for the withdrawals from the Fund; and
- (v) provide for the winding up of the Fund.

2.2 Capital

The capital of the Fund shall be one half percent of all the revenue collected by the national government as appropriated by Parliament in each financial year.

PART III — SOURCES, OBJECTS AND PURPOSE OF THE FUND

3.1 Sources of the Fund

The Fund shall consist of:

- (a) one half of all revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly;
- (b) income generated from proceeds of the Fund; and
- (c) the cumulative amount of revenue from previous years not spent.

3.2 Object and purpose of the Fund

The object and purpose of the Fund is to provide basic services including water, roads, health facilities and electricity to the marginalized areas to the extent necessary to bring the quality of those services to the level generally enjoyed by the rest of the nation, so far as possible in an equitable, efficient and transparent manner.

PART IV—MANAGEMENT OF THE FUND

4.1 Establishment of the Board

There is established an unincorporated board to be known as the Equalization Fund Board which shall consist of:

- (a) the Principal Secretary for the time being responsible for matters relating to finance who shall be the chairperson;
- (b) one Principal Secretary for the time being responsible for matters relating to Devolution and Planning or his or her representative;
- (c) the Principal Secretary for the time being responsible for matters relating to water or his or her representative;
- (d) the Principal Secretary for the time being responsible for matters relating to roads or his or her representative;

- (e) the Principal Secretary for the time being responsible for matters relating to health or his or her representative;
- (f) the Principal Secretary in for the time being responsible for matters relating to energy or his or her representative; and
- (g) five other members of either gender appointed by the Cabinet Secretary from outside the Public Service.

4.2 Co-option of other members

The Board may, from time to time, co-opt other members as it may deem necessary for the proper and efficient discharge of the functions of the Board.

4.3 Qualification requirements of members

A person shall not be nominated and appointed to the Board under paragraph 4.1(g) unless that person:

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) has at least five years' experience in matters relating to the provisions of basic services.

4.4 Functions of the Board

The functions of the Board shall be to advise the Cabinet Secretary on the proper and effective performance of the Fund and in particular, the Board shall:

- (a) propose and advise the Cabinet Secretary on the allocation of funds among the various basic services in the marginalized areas in accordance with Articles 204 (2) and 216(4) of the Constitution;

- (b) review the performance of the Fund and make recommendations to improve on the operations of the Fund to the Cabinet Secretary;
- (c) review the proposed work plans prepared by relevant state Departments or county governments under paragraph 5 to be financed by the Fund in accordance with Articles 204(2) and 216(4) of the Constitution and advise the Cabinet Secretary;
- (d) propose and advise on equitable distribution of resources from the Fund to the various marginalized areas;
- (e) review and propose annual estimates of expenditure to be funded from the Fund and recommend whether the national government will use the fund directly or indirectly through conditional grants to counties;
- (f) review the consolidated quarterly reports prepared by the administrator of the fund on the implementation of the work plans and submit them to the Cabinet Secretary with copies to the Commission on Revenue Allocation and the Controller of Budget;
- (g) make recommendations to the Cabinet Secretary for provision of other basic services not explicitly covered under paragraph 3.2 that could be financed from the Fund; and
- (h) perform any other functions that may be assigned by the Cabinet Secretary, from time to time.

4.5 Establishment of committees

The Board may establish committees consisting of its members to deal with such matters as the Board may specify.

4.6 Expenses of the Board

The expenses of the Board shall be met out of funds provided by Parliament for that purpose and shall not exceed ten (10) percent of the annual voted provision.

4.7 Secretary to the Board

The officer administering the Fund shall be the Secretary to the Board.

4.8 Responsibilities of the Secretary

The Secretary shall be responsible for arranging the business of the Board's meetings, keeping records of the proceedings of the Board, and shall perform such other duties as the Board may direct.

4.9 Secretary to be responsible to the Board

In performance of duties under these Guidelines, the Secretary shall be responsible to the Board.

4.10 Absence of the Secretary

The Board may, in absence of the Secretary, appoint any member of the Board or staff of the National Treasury to temporarily perform the functions of the Secretary under paragraph 4.8.

4.11 Conduct of the affairs of the Board

The conduct and regulation of the business and affairs of the Board shall be provided for in the Schedule.

PART V— PREPARATION AND SUBMISSION OF WORKPLANS

5.1 Preparation and submission of work plans

The relevant State Department or county government shall prepare a work plan in respect of a financial year and in preparing this work plan they shall ensure that the work plan:

- (a) contains information on the financial and non-financial performance of the Fund; and
- (b) is in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time.

5.2 Quarterly financial statements

The relevant State Departments or county government shall prepare quarterly financial statements to officer administering the Fund.

5.3 Approval of reports

The work plans/projects/quarterly reports shall be prepared and approved by the respective State Department or county government before submission to the Fund.

PART VI— WITHDRAWALS FROM THE FUND

- 6.1 Where a withdrawal from the Fund is authorized under an Act of Parliament that approves the appropriation of money, the National Treasury shall make a requisition for the withdrawal and submit it to the Controller of Budget for authorization.
- 6.2 The authorization by the Controller of Budget of a withdrawal from the Fund, together with written instructions from the National Treasury requesting for the withdrawal, shall be sufficient authority for the Central Bank of Kenya to pay amounts from the Equalization Fund Account in accordance with the authorization and instructions given.
- 6.3 All withdrawals made from the Fund under paragraph 6.1 shall be deposited into the respective State Department or County Revenue Fund under which a marginalized area falls.
- 6.4 All payments made from the County Revenue Fund for the purposes of the County marginalized areas shall be on the basis of the County Appropriation Act.
- 6.5 All payments made from the County Revenue Fund under paragraph 6.4 shall be authorized by the Controller of Budget.

PART VII—ADMINISTRATION OF THE FUND

7.1 The officer administering the Fund shall:

- (a) open a separate account at the Central Bank of Kenya into which all monies raised under paragraph 3.1 of this guidelines shall be paid into;
- (b) operate and maintain the bank account in (a) in the manner as prescribed by the National Treasury from time to time;
- (c) consult with the Cabinet Secretary and the Board on matters relating to the administration of the Fund;
- (d) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund;
- (e) prepare, sign and submit to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund with a copy to the Controller of Budget and the statements shall be prepared in a manner prescribed by the Accounting Standards Board;
- (f) furnish additional information as the officer considers to be proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act, 2003;
- (g) consolidate the quarterly reports received from State Departments or county governments under paragraph 5.3 and submit a consolidated quarterly report to the Board;
- (h) In executing subparagraph (g), the administrator of the Fund, may with the approval of the Board, undertake monitoring and evaluation of projects implemented through funding from the Equalization Fund;
- (i) prepare a quarterly report on the receipts into issues and withdrawals from the Fund and submit it to the Cabinet

Secretary for gazettelement before or on the 21st day of every fourth month of the financial year.

PART VIII—WINDING UP OF THE FUND

8.0

At the winding up of the Fund, the cash balances shall be transferred to the National Exchequer Account while other assets of the Fund shall be transferred to the State Department responsible for matters relating to finance.

SCHEDULE

CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

1. Tenure of Office.

Members of the Board appointed under these Guidelines shall, subject to the provisions of this Schedule, hold office for a term of three years, on such terms and conditions as may be specified in the instrument of appointment but shall

be eligible for re-appointment for a further term of three years.

2. Vacation of office

A Member of the Board, other than *ex-officio* member, may—

(a) at any time resign from office by notice in writing to the Cabinet Secretary;

(b) be removed from office by the Cabinet Secretary, if the member—

(i) has been absent from three consecutive meetings of the Board without permission from the chairperson;

(ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

(iii) is convicted of an offence involving dishonesty or fraud;

(iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;

(v) is incapacitated by prolonged physical or mental illness; or

(vi) is otherwise unable or unfit to discharge his functions.

3. Meetings of the Board

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of the next meeting.

- (2) Unless three quarters 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.
- (3) The quorum for the conduct of the business of the Board shall be five members excluding the Secretary, of whom the majority of shall be from amongst the non *ex-officio* members.
- (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 that meeting and the business transacted thereat, have all the powers of the chairperson.
- (5) Unless a unanimous decision is reached a decision on any matter before the Board shall be reached by consensus.
- (6) Subject to subparagraph (3), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.
- (7) 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 the attendance of any other persons at its meetings and may make standing orders in respect thereof.

4. Disclosure of Interest

- (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the

consideration or discussion with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

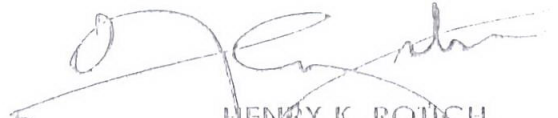
Provided that if the majority of the members present are of the opinion that the experience or expertise of that member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose.

- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

5. Minutes

The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books for that purpose.

Made on the....., 2014.



HENRY K. ROITCH,
Cabinet Secretary, National Treasury.

