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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (THIRD SESSION)

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON THE CONSIDERATION OF THE EQUALISATION FUND BILL (N.A. BILL NO. 43 OF 2019)

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DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
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OCTOBER, 2019

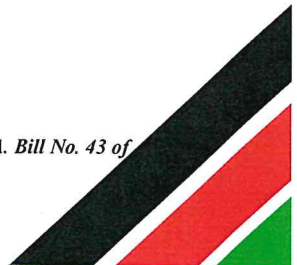


TABLE OF CONTENTS

CHAIRPERSON'S FOREWORD.....	3
EXECUTIVE SUMMARY	4
CHAPTER ONE	5
1 PREFACE.....	5
1.1 Establishment of the Committee.....	5
1.2 Mandate of the Committee.....	5
1.3 Committee Membership	6
1.4 Committee Secretariat.....	7
CHAPTER TWO	8
2 OVERVIEW OF THE EQUALISATION FUND BILL, 2019 (NATIONAL ASSEMBLY BILL NO. 43 OF 2019).....	8
CHAPTER THREE	9
3 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION	9
3.1 The National Treasury	9
3.2 The Commission on Revenue Allocation	13
3.3 National Treasury and the Office of the Attorney General and Department of Justice.....	16
CHAPTER FOUR.....	19
4 COMMITTEE'S OBSERVATION	19
CHAPTER FIVE	20
5 COMMITTEE'S RECOMMENDATION.....	20
CHAPTER SIX.....	21
6 SCHEDULE OF COMMITTEE'S PROPOSED AMENDMENTS.....	21

CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings on the consideration of the Equalisation Fund Bill, 2019, which was read a first time on **Wednesday, 3rd July, 2019** pursuant to Standing Order 127.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the print media on Thursday, 18th July, 2019 pursuant to Article 118 of the Constitution.

By the time the Committee was considering the Bill, three stakeholders had submitted memorandum for consideration.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Equalisation Fund Bill, 2019.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank the sponsor of the Bill, Hon. Kassait Kamket, M.P., the National Treasury, the Kenya Law Reform Commission and the Commission on Revenue Allocation for their participation in scrutinizing the Bill.

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

Hon. Joseph Limo, M.P.

EXECUTIVE SUMMARY

The Equalization Fund is established by Article 204 of the Constitution which states that there shall be paid one half percent of all the revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly. The Fund is meant to provide basic services such as water, roads health facilities and electricity to the marginalized areas as identified by the Commission on Revenue Allocation.

Currently, the Fund is administered through the Public Finance Management Act Framework under the *Public Finance Management (Equalization Fund) Guidelines, 2015*. There are certain weaknesses that have been identified having been a hindrance to the effective implementation of the Equalization Fund. The need to have a separate law can therefore not be gainsaid. It is for this reason therefore the equalization fund Bill was proposed so as to provide proper mechanism for implementation and oversight by establishing units to the lowest level of subcounty.

The Equalization Fund Bill, 2019 was published on 18th June, 2019 and read a first time on **Wednesday, 3rd July, 2019** and thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127.

The Equalization Fund Bill, 2019 seeks to operationalize the Equalization Fund as established under Article 204 of the Constitution. The Bill proposes to establish a Board to administer the Fund in instances where the Fund is directly used for the provision of basic services including water, roads, health facilities and electricity to marginalized areas to bring the quality of the provision of such services as nearly as possible to the same quality enjoyed by other areas in the country. The Bill further proposes the establishment of Local Equalization Fund Committees in each ward in marginalized areas as determined by the Commission on Revenue Allocation in their report prepared pursuant to Article of the Constitution. The Local Committees are tasked with identifying projects for funding in consultation with local communities with the final decision being made by the Board and implementation done by a project implementation committee.

Enactment of the proposed Bill will reduce the current bureaucratic red-tape that exists with regard to the administration of the Fund currently domiciled in the National Treasury. The framers of the Constitution conceptualized the Fund as a means of enabling marginalized areas to “catch-up” with the rest of the country in terms of access to basic needs. The vision is yet to be achieved eight years after the promulgation of the Constitution. The Bill seeks to propose a model of administering the Fund which will accelerate its roll-out for the benefit of citizens who continue to suffer on the fringes.

The proposed Bill delegates legislative powers to the Cabinet Secretary responsible for the National Treasury to make regulations for the better carrying into effect of its provisions once enacted. The proposed Bill does not limit any fundamental rights and freedoms. The proposed Bill does not affect the functions of county governments as set out in the Fourth Schedule of the Constitution and is therefore not a Bill concerning county governments.

The Bill is a money Bill for the purposes of Article 114 of the Constitution. Its enactment will therefore occasion additional expenditure of public funds.

CHAPTER ONE

1 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:
 - i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - ii. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
 - iii. **To study and review all the legislation referred to it;**
 - iv. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - v. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - vi. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on appointments);
 - vii. To examine treaties, agreements and conventions;
 - viii. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - ix. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - x. To examine any questions raised by Members on a matter within its mandate.

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and departments;
 - a. The National Treasury and Ministry of Planning
 - b. Ministry of Devolution and ASAL
 - c. The Commission on Revenue Allocation
 - d. Office of the Controller of Budget
 - e. Salaries and Remuneration Commission

1.3 Committee Membership

4. The Departmental Committee on Finance and National Planning was constituted by the House in December, 2017 and comprises of the following Members:-

Hon. Joseph K. Limo, MP (**Chairperson**)
MP for Kipkelion East Constituency
Jubilee Party

Hon. Isaac W. Ndirangu (**Vice-Chairperson**)
M.P for Roysambu Constituency
Jubilee Party

Hon. Jimmy O. Angwenyi, MP
MP for Kitutu Chache North
Constituency
Jubilee Party

Hon. Christopher Omulele, MP
MP for Luanda Constituency
ODM Party

Hon. Dr. Enoch Kibunguchy, MP
MP for Likuyani Constituency
FORD-K

Hon. Shakeel Shabbir Ahmed, MP
MP for Kisumu Town East
Independent Member

Hon. Abdul Rahim Dawood, MP
MP for North Imenti Constituency
Jubilee Party

Hon. Daniel E. Nanok, MP
MP for Turkana West Constituency
Jubilee Party

Hon. Andrew A. Okuome, MP
MP for Karachuonyo Constituency
ODM Party

Hon. David M. Mboni, MP
MP for Kitui Rural Constituency
CCU Party

Hon. Francis K. Kimani, MP
M.P. Molo Constituency

Jubilee Party

Hon. Joseph M. Oyula, MP
MP for Butula Constituency
ODM Party

Hon. Joshua C. Kandie, MP
MP for Baringo Central Constituency
MCC Party

The Hon. Lydia H. Mizighi, MP
MP for Taita Taveta County
Jubilee Party

Hon. Mohamed A. Mohamed, MP
MP for Nyali Constituency
Independent Member

Hon. Purity W. Ngirici, MP
MP for Kirinyaga County
Jubilee Party

Hon. Samuel Atandi, MP
MP for Alego Usonga Constituency
ODM Party

Hon. Stanley M. Muthama, MP
MP for Lamu West Constituency
MCC Party

The Hon. Edith Nyenze, MP
MP for Kitui West Constituency
WDM-K

1.4 Committee Secretariat

5. The Committee is facilitated by the following Secretariat:-

Ms. Leah W. Mwaura
Senior Clerk Assistant/Lead Clerk

Ms. Jennifer Ndeto
Principal Legal Counsel 1

Ms. Laureen Wesonga
Clerk Assistant II

Mr. Josephat Motonu
Fiscal Analyst I

Mr. Chelang'a Maiyo
Research Officer II

CHAPTER TWO

2 OVERVIEW OF THE EQUALISATION FUND BILL, 2019 (NATIONAL ASSEMBLY BILL NO. 43 OF 2019)

6. The objective of this Legislative Proposal is to operationalize the Equalisation Fund as established under Article 204 of the Constitution. The proposed legislation contains eleven (11) parts as follows:-
7. **PART I (Clauses 1-4)** of the Bill contains preliminary provisions.
8. **PART II (Clause 5)** of the Bill outlines the sources of the Fund including monies unspent by the government or retained in the Fund.
9. **PART III (Clauses 6-19)** of the Bill establishes the Equalisation Fund Board as a body corporate with perpetual succession. Under Clause 8 the Board is to comprise nine (9) members with a Chairperson appointed from a marginalized community and vetted by the National Assembly. Clause 9 limits all members of the Board to a single six (6) year term of office.
10. **PART IV (Clauses 20-22)** provides for the establishment of Local Equalisation Fund Committees in each ward of a marginalized area to assist the Board in identification and administration of projects funded by the Fund. The Committees are mandated to employ such staff as may be required in the exercise of their mandate.
11. **PART V (Clauses 23-28)** contains provisions on the identification and consideration of projects proposed for funding.
12. **PART VI (Clauses 29-33)** contains financial provisions.
13. **PART VII (Clauses 34-35)** contains provisions on withdrawals from the Fund.
14. **PART VIII (Clauses 36-37)** contains miscellaneous provisions.
15. **PART IX (Clause 38)** contains provisions on offences and penalties.
16. **PART X (Clause 39)** contains provisions on delegated powers.
17. **PART XI (Clauses 40-41)** contains consequential amendments. The Bill proposes the repeal of section 18 of the Public Finance Management Act on the administration of the Equalisation Fund and the guidelines made under the Act in relation to Fund.

CHAPTER THREE

3 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

18. The Committee received memorandum from three (3) stakeholders following a call for memoranda through the print media on **18th July, 2019**. The following stakeholders submitted their memoranda:-

- i. The National Treasury;
- ii. Commission on Revenue Allocation (CRA); and
- iii. The National Treasury and the Office of the Attorney General and Department of Justice

19. The proposals by the stakeholders were deliberated on and considered by the Committee. Below are their views:-

3.1 The National Treasury

The National Treasury submitted as follows, THAT –

20. **the Constitution in relation to the Object and Purpose of the Bill:** the main object and purpose of the Bill is to operationalize Article 204 of the Constitution. Article 204(3)(c) provides that “*the national government may use the Equalisation Fund either directly or indirectly through conditional grants to counties in which marginalized communities exist*”. In view of this provision, it is clear that the Constitution has assigned the national government, through existing structures of the executive, powers to apply the Equalisation Fund as contemplated in Article 204(3) (c) to provide basic services including water, roads, health facilities and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.
21. it was the considered view of the National Treasury that the Constitution does not envisage the establishment of any other structures of directly administering the Equalization Fund and for connected purposes as proposed in the Bill and as such the National Assembly may drop the proposed legislation all together.
22. Article 221(2) requires the Cabinet Secretary to submit the estimates of expenditure from the Equalisation Fund. This indicates that there was an intention to assign the responsibility of preparing and submitting the estimates to the National Executive through the Cabinet Secretary.
23. **Public Finance Management Act, 2012 to prevail in certain matters:** Clause 24 gives powers to the Cabinet Secretary to among other things establish Public Funds and clause 6 provides that the PFMA, 2012 shall prevail in the event of another Act that is contrary to its provisions on

matters among them the establishment of Public Funds. In view of that provision, he opined that the Equalisation Fund should be operationalized under Section 24 of the PFMA, 2012 either through Regulations or Guidelines on management of the Fund and not an Act of Parliament as proposed.

24. **Committee's Observation and Recommendation:** On the above National Treasury's views, the Committee was of the view that the Equalization Fund has failed to live to its expectation due to lack of standalone legal framework and in turn lack of anchorage of administrative structures in an independent law. The current composition of the Equalization Fund Oversight Board established through the *Public Finance Management (Equalization Fund) Guidelines, 2015* has not been effective in administering the Equalization Fund. Given that the Fund has a time period within which it should be operational, that is twenty years with a possibility of an extension through an Act of Parliament, time is therefore a factor in as far as the success of this Fund is concerned. The Committee therefore rejected the view of the National Treasury that there is no need of enacting the law and that the same should be operationalized under Section 24 of the under the PFMA
25. **Use of the Ward as the unit of marginalized areas:** Article 216(4) of the Constitution assigns the Commission on Revenue Allocation powers to determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalized areas for purposes of Article 204(2). However, the Constitution does not envisage a marginalized area to be synonymous with a Ward unit implied in clause 20 of the Bill; whereby it provides for "*establishment of a Local Equalisation Committee for every Ward in a marginalized area as determined by the Commission on Revenue Allocation pursuant to Article 216(4)*". However, the reference to a ward in relation to a marginalized area, takes away the autonomy of the Commission to determine the unit of marginalized area without necessarily using only Wards as a reference point of such a determination. Indeed, the Constitution did not envisage a marginalized area to be a ward but an area to be determined and informed independently by the Commission through policy.
26. the use of Wards or any other lower geographical unit as the basic unit of marginalized areas poses risk of the likelihood of spreading of the Equalisation Fund resources thinly across the marginalized areas. This is at the expense of the opportunity that exists in consolidation and assignment of resources to a broad unit of marginalized areas which may identify one or more but bigger projects through a structured public participation and which can have significant impact across many smaller geographical units within the area.
27. **Establishment of the Local Equalisation Committees and their staff:** Clause 20 provides for the establishment of an eleven (11) member Local Equalisation Committee for every ward in a marginalized area as maybe determined pursuant to Article 216(4). It was the National Treasury's opinion that the establishment of the proposed committees, besides increasing the risk of implementing thinly spread projects and without significance social economic impact across

geographical areas, will indeed have a huge bearing on administration cost during project identification and implementation than has been before.

28. **Huge Operational Costs of running Committees:** Assuming operationalization of the proposed second-generation policy on marginalization which identifies 366 wards as marginalized areas and assuming the committees hold the prescribed maximum of 24 meetings in a year with a sitting allowance of Kshs. 5,000 per member per sitting, then the total committee sitting allowances would amount to Kshs. 483.12 million in a financial year. This excludes costs on project procurement, monitoring and evaluation, payment of Board Members' allowances, remuneration of Board secretariat and operational and maintenance cost among others.
29. **Committee's Observation and Recommendation: The Committee agreed with the above views by the National Treasury and therefore proposed to include an amendment to have the smallest unit of implementation of committees to be at the sub county level. This would not only make the committees efficient but will also reduce the administrative costs of operating them.**
30. The proposal under Clause 22 of the Bill that the local committees may engage staff as may be deemed necessary will further escalate the cost of administering the Equalisation Fund. In view of the foregoing, the National Treasury proposed that identification and implementation of the projects to be financed from the Equalisation Fund be assigned to the already existing National Government structures through MDAs responsible for matters relating to the four basic areas identified in Article 204, in order to save on implementation cost as well as leverage on their already existing technical capacity.
31. **Committee's Observation and Recommendation: On the above proposal by the National Treasury, the Committee was of the view that assigning the implementation of projects to the respective MDAs does not provide proper oversight mechanisms and hence the need to establish a board to identify and implement these projects..**
32. **Borrowing by the Board:** Clause 6 of the Bill establishes a body corporate Board of the Equalisation Fund capable of borrowing money or making investments. Whereas state corporations can borrow with the approval of the National Treasury, the objects and purpose of the Equalisation Fund is to provide basic services pursuant to Article 204(2), services which are for public good and do not generate income which can pay back loans or liabilities entered into by the Board. In view of this, the Board may not be in a position to borrow or make investments for the Fund and the provision should therefore be dropped.
33. **Committee's Observation and Recommendation: The Committee agreed with the National Treasury by acknowledging that Equalisation Fund is a special fund established under the Constitution to be utilised to enhance the provision of basic services in marginalised areas and contemplating using such funds in the manner provided under paragraph (b) would be inappropriate.**

34. **Composition of the Equalisation Fund Board:** the Board established under clause 6 and 7 of the proposed Bill recommends appointment of the Chair from marginalized community and it excludes the Principal Secretary for matters relating to Energy which is one of the areas provided exclusively for financing under Article 204(2). It also excludes the Principal Secretary for matters relating to coordination of the functions of the national government who has been assigned to Chair the Cabinet subcommittee on implementation of all national government's projects and communication pursuant to Executive Order No. 1 of 2019.
35. **Committee's Observation and Recommendation:** On the above view by the National Treasury, the Committee agreed with it and further proposed an amendment to include the Principal Secretary responsible for matters relating to Energy and further to provide that the chairperson of the board shall not be necessarily from the marginalized community. In as far as taking care of the minorities interests, the Committee was of the view that their interests would be taken care of in that regard as opposed to having a chairperson from the minorities who may not be necessarily impartial and may have a direct conflict of interest.
36. **Functions and powers of the Board:** whereas in the standard practice the functions of Boards is policy direction and provision of oversight, clause 10 assigns the Board operational functions such as monitoring and evaluation of projects, disbursement of funds other than approving disbursement of the same, management of the Fund instead of providing oversight to its administration among others. In view of this, National Treasury proposed that the Board limits itself to policy direction and oversight of functions of the secretariat.
37. **Chief Executive of the Fund:** Clause 16 of the Bill provides for competitive recruitment of a CEO to the Fund, who shall also be Secretary to the Fund, for a renewable term of five years. However, the clause does not provide how many times the CEO's appointment can be renewed leaving room for indefinite stay in office. Secondly, the standard practice is that a CEO should have a three-year term renewable once.
38. **The Committee agreed partially with the views raised on clause 16 and agreed to provide that the CEO shall hold office for a term of three years and shall be eligible for re-appointment for one further and final term of three years. This is in line with the *Mwongozo Guidelines*.**
39. **Administration of the Fund:** the Bill has not provided for the designation of an administrator of the Fund pursuant to section 24 of the PFMA, 2012. Whereas the Bill provides for recruitment of a CEO of the Fund, it does not explicitly designate the CEO as an administrator of the Fund.
40. **The Committee did not agree with the view that there was need to establish a Fund Administrator as similar Funds such as NGCDF do not have an administrator hence no need to provide for the same.**
41. **Project Management Committees:** Clause 27 of the Bill alludes to appointment of Project Management Committees in accordance with the regulation under clause 39 of the Bill. If the

Project Management Committees were to be appointed, there is no clarity of their functions and those of the Local Committees established under Section 20 of the Bill. In any case this would lead to duplication of functions.

42. **Withdrawals from the Fund:** Clause 35(3) of the Bill proposes that withdrawals from the Fund shall be deposited in to respective accounts of line ministries for purposes of funding projects approved by the Board. Although this is the standard procedure according to the guidelines on management of the Equalisation Fund, the Bill does not provide the role of line ministries in the implementation of projects financed from the Equalisation Fund and in view of the envisaged Local Committees and Project Management Committees.
43. **The Committee observed that the representation of line Ministries will be at the level of the Board hence no need to channel funds through the line ministries as this would be too much unnecessary bureaucracy which would contribute to the inefficiency.**
44. In conclusion, the National Treasury advised that the Equalisation Fund has already been operationalized under Section 18 of the PFMA, 2012 and Guidelines on administration of the Fund issued under Gazette Notice No. 1711 of 13th March, 2015. In their view that is the right approach and not through another Act of Parliament. The National Treasury noted that there is a legal opinion from the Attorney General that all public funds should be anchored under the PFMA, 2012 and any other legislation.

3.2 The Commission on Revenue Allocation

45. The Commission proposed the following amendments to the Bill:-
46. Amending **clause 5** by deleting sub clause 5(b) because the fund is a special fund which is not subject of investment or generation of any interest on its CBK account making the provision irrelevant.
47. **The Committee opined that the funds will be deposited in bank accounts that will likely earn interests hence there was no harm in providing for the same.**
48. Amendment of **clause 7** of the Bill as follows:-
- i. addition of principal secretary of energy;
 - ii. reduction of the number of persons from four to three; and
 - iii. addition of the phrase ‘or his or her representative’ at the end of paragraphs (b) – (e) and also after the new addition of the PS Energy
49. This is to align with Article 204(2) of the Constitution on the Equalisation fund services components which touches on electricity that falls under energy, to accommodate the additional PS for Energy and to allow for smooth operations of the Board affairs where the substantive member is unavailable.

50. **The Committee agreed with the view by the Commission on Revenue Allocation to include the PS Energy or his representative and to also reduce the number of persons representing minorities to three. The Committee went further ahead to introduce an amendment to also include representatives of the other mentioned Principal Secretary. This would help in improving efficiencies of the board.**
51. Amendment of **clause 7(4)(d)** by enhancing the Kshs. 10,000/= fine cited in the provision since it is too low.
52. **On the above proposal by CRA, the Committee agreed to enhance the fine so as not to lock out potential board members who have been fined for minor offences such as traffic offences.**
53. Amendment of **clause 8(c) (v)** by:-
 (a) Adding to the phrase “member of the Board” the words appointed under section 7(1)(f)
 (b) Inserting the term “any other relevant field” after (v)
54. This is because the proposed membership of the other members of the Board is by virtue of office hence the phrase is not applicable except as regards the chairpersons and the persons under clause 7(1)(f) of the Board and for Inclusivity of other relevant professions.
55. Adding to the phrase “member of the Board” the words appointed under section 7(1)(f).
56. **The Committee agreed with the views of CRA to amend clause 8 so as to include qualifications for being a board member to include persons who may have any other relevant knowledge. The Committee was of the view that there was need to include Engineering field in addition to the professions already provided for.**
57. Reducing the term of office to 5 years for the chairperson and specifying two three year terms for the other Board Members appointed under section 7(1)(f) to ensure continuity.
58. **The Committee agreed with the view by the CRA and proposed amendment to provide that the CEO shall serve for a period of three years renewable once. This is in line with the *Mwongozo Guidelines*.**
59. Amendment of **clause 10(b)** by adding the phrase ‘and approve’ immediately after the word ‘consider’ in order to harmonize it with Clause 25 of the Bill.
60. **The Committee agreed with the proposal to amend clause 10 (b) and proposed an amendment. The rationale for the amendment is to include approval of projects by the Board as one of its functions in harmony with clause 25 that provides that the Board shall scrutinize and approve projects of the Local Committee.**
61. Amendment of **clause 16(2)** by inserting the term “for one further term” after the word reappointment in order to align it with Mwongozo guidelines.

62. **The Committee agreed with the proposal by the CRA and agreed to include an amendment to provide for the term of office for the CEO.**
63. Amending **clause 20** by:-
- (a) deletion of sub clause 20(2)(f); and
 - (b) deletion of the frequency of the committee meetings under sub clause 20(9) from ‘at least six’ to ‘at least four’ and also to ‘not more than twenty meetings’ to ‘not more than eight meetings’.
64. This is because it is impractical to second such Board Officers given the many wards and to reduce administrative costs.
65. **In Clause 20, the Committee did not accept the deletion of the sub clause 20(2) (f) as the officer provided in the sub clause will act as the fund manager. The Committee also rejected the proposal to reduce the frequency of meetings as the envisaged expenditure has been reduced by elevating the unit of the local committees to the sub county level.**
66. Amending **clause 31** by adding 5% for administration expenses of the Board. This is to curtail abuse of the fund monies and also in view of the fact that bulk of the Board membership are public servants whose remuneration is catered for in their respective line ministries/entities.
67. **The Committee agreed with the CRA on capping of administration expenses to five percent. The rationale for the amendment is to put a cap on the amount of money that can be spent of administration expenses.**
68. Amending **clause 32** by deleting the phrase ‘at least four months before the end’ and substituting with the phrase ‘within the period of three months after the end’ under sub clause (2). This because the substituted duration of three months is the general time frame in the other government entities.
69. **The Committee agreed with the view raised by CRA in clause 32. The Committee observed that this is intended to harmonize the submission of accounts to the Auditor General with the requirements of the Public Finance Management Act and the Public Audit Act.**
70. Amendment of **clause 35** by deleting clause 35(3). This is because the Board is established as a body corporate with an accounting officer and money should therefore move from the consolidated fund to the Equalization Fund then to the project implementation units as proposed in the CRA Marginalization policy.
71. **The Committee agreed with the proposal by CRA to ensure that the funds move directly from the Consolidated Fund to the project implementation units. This will reduce inefficiencies arising out of channeling through the line ministries.**
72. Amendment of **clause 39(1)** by inserting the phrase ‘in consultation with the Board’ after the phrase ‘The Cabinet Secretary’. This is for Inclusivity Purposes as the Board is also the policy organ of the Fund.

73. **The Committee adopted the proposal by CRA to ensure that there is consultations between the Board and Cabinet Secretary in developing subsidiary legislations for better carrying out of the provisions of the Act.**
74. Insertion of an additional transition clause providing that the existing projects will be implemented by the New Board and providing for extension of the Fund period in line with Article 204.
75. **The Committee adopted the proposal to provide for transitional clauses.**

3.3 Office of the Attorney General and Department of Justice

In a letter REF:IGFR/EF/01/TY II (20) dated 7th October, 2019, the National Treasury and the Office of the Attorney General submitted that:-

76. The Office of the Attorney General and Department of Justice issued a legal opinion to the Speaker of the National Assembly on a similar Bill which was referred to as Equalisation Fund Bill, 2015. In view of the similarity of the current Bill to the EF Bill 2015, the Attorney General advised as follows on the current Bill:-
77. The Bill has been overtaken by events and may therefore not be necessary because there is already an administrative structure in place for the management of the Equalization Fund under Section 18(1) of the Public Finance Management Act (PFM Act, 2012) which provides that the National Treasury shall administer the Equalization Fund in accordance with Article 204 of the Constitution. There is no requirement or need for an Act of Parliament to breathe life into the Equalization Fund.
78. In addition, Section 6(f) of the PFM Act, 2012 provides that the Act is supreme and prevails over any other Act on matters relating to the establishment and management of public funds in Kenya. In furtherance to the provisions aforesaid and in exercise of his powers under the Cabinet Secretary to the Treasury (Incorporation) Act Cap. 101 of 2012, the Cabinet Secretary to the National Treasury on the 13th March 2015, under Gazette Notice No. 1711 published guidelines on the administration of the Equalization Fund established under Article 204 of the Constitution referred to as the Public Finance Management (Equalization Fund) Regulations, 2015 and created an advisory Board at Part IV of the guidelines known as the Equalization Fund Advisory Board.
79. In light of the above, it is necessary for Parliament to demonstrate the mischief that the Bill seeks to remedy or cure in the prevailing circumstances otherwise, the prudent step to take would be to give the existing structures for administering the Equalization Fund an opportunity to be tested while Parliament focuses on providing the very crucial oversight over the framework.

80. The Bill is likely to be challenged in the Constitutional Court and suffer the same fate as that of the CDF Act, 2013 which was declared unconstitutional in February 2015.
81. Article 204(2) of the Constitution provides that the National Government shall use the Fund to provide basic services including water, roads, health facilities and electricity to marginalized areas to the extent necessary and as far as possible, to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation. The 4th Schedule to the Constitution clearly distributes functions between the National and County levels of Government and at Part 2 places the provision of certain basic services including health, roads, electricity and water to County Governments.
82. The administrative structure therefore as proposed by the Bill, where the spending of the Equalization Fund will be through an EF Board and the CDF Committees existing under the CDF Act No. 30 of 2013 would be introducing a spending framework that has no administrative backbone or system to operate within the 2010 Constitutional architecture. This executive function is a preserve for the National and County Executive. Further, it is expected that projects to benefit from the Fund will be clearly provided for in line with a county's strategic development plans or the County Integrated Development Plans to guard against disjointed, uneconomical or wasteful spending.
83. The Board as provided in the Bill with executive powers would necessitate a larger budget and potentially eat into the Equalization Fund to cover for administrative costs. This is unnecessary as the alternative and the existing advisory Board as contained in the PFM (Equalization Fund) Regulations, 2015 offers a prudent and economic administration of the Equalization Fund. It is therefore a more viable option.
84. The Bill undermines devolution and separation of powers both being fundamental principles of the Constitution of Kenya. Under Article 1(4) of the Constitution, sovereign power is exercised between two levels of Government in Kenya, the National and County levels. Article 6 of the Constitution divides the territory of Kenya into counties and the two levels of Government are distinct and inter-dependent and are to conduct their mutual relations on the basis of consultation and cooperation. Principles of Governance including devolution of power as per Article 10(2)(a) bind all state organs including Parliament in the conduct of its mandate.
85. Article 204(3)(b) of the Constitution allows for direct or indirect execution of projects by the National Government or through conditional grants to counties in which marginalized communities exist. Projects can be implemented across county boundaries so that two or more counties can have a joint project or programme, other projects can be county specific. In terms of macro-government policies, this is only possible through a framework of consultation as envisaged by Article 6 of the Constitution between the two levels of Government, which are in any event, the only governance administrative structures recognized by the Constitution.

86. Confining the utilization of the Fund to constituency based projects takes from the purview of the National and County Governments the responsibility of ensuring the prudent utilization of the Fund and goes against Article 201 of the Constitution on principles of public finance. By deleting Article 204(3)(b) of the Constitution which provides for use of the fund directly or indirectly through conditional grants to Counties, the Bill waters down safeguards that would promote responsibility, prudence and better accountability in the use of public finance. It also gets rid of County Governments in the utilization of funds. It ought to be noted that in disbursing funds and grants as envisioned in Article 204, the National Government ought to respect structures established by the Constitution within the County Government set up.
87. The Bill appears to go against the intention of the drafters of the Constitution in terms of the utilization of the Equalization Fund. Marginalized areas under Article 260 and as read with Article 216(4) of the Constitution are not confined to boundaries of counties and/or Constituencies and may change from time to time. This position enables the National Government in consultation with the County Governments to initiate and execute large cross county infrastructural projects opposed to mini-projects confined to constituencies as is proposed by the Bill which would result in uneconomical and imprudent use of public funds. In terms of Article 216(4), the Commission on Revenue Allocation (CRA) has the mandate of developing and reviewing a National marginalization policy and determining marginalized areas. In March 2015, the CRA designated 14 counties as marginalized and has undertaken subsequent reviews.
88. In view of the foregoing, they urged the Committee to consider the following two options:-
- i. the first to reject the Bill; and
 - ii. secondly, is to refer the Bill back to the sponsor with recommendations that the Bill be subjected to further and wider scrutiny by stakeholders before resubmission to the House.
89. **The Committee observed that the AG was opposed to the Bill based on certain concerns such as the already existing PFMA. The Committee agreed to proceed with the consideration of the Bill in light of the concerns raised by the AG. The Committee noted that the Bill is intended to cure the current inefficiencies witnessed while administering the Equalisation Fund.**

CHAPTER FOUR

4 COMMITTEE'S OBSERVATION

90. The Committee observed that:-

- a. The monies paid out of the Equalisation Fund have not had great impact in the marginalized areas as was intended.
- b. The Bill will ensure that the Equalisation Fund achieves its intended purpose.
- c. The Bill will open an avenue to bring the Fund closer to the people.

CHAPTER FIVE

5 COMMITTEE'S RECOMMENDATION

91. The Committee having considered the representations from all the stakeholders recommends that the Equalisation Fund Bill, 2019 be passed by the House with amendments.

CHAPTER SIX

6 SCHEDULE OF COMMITTEE'S PROPOSED AMENDMENTS

92. The Committee proposed the following amendments to be considered in the Committee of the Whole House:-

CLAUSE 6

93. **THAT** Clause 6 of the Bill be amended in sub-clause (2)

(a) by deleting the word "charging" appearing immediately after the word "holding," under paragraph (b)

Justification

94. The paragraph provides that the Equalisation Fund Board is capable of charging movable and immovable property belonging to the Board. The rationale for the amendment is that the fund is a special fund established under the Constitution to be utilised to enhance the provision of basic services in marginalised areas and contemplating using such funds in the manner provided under paragraph (b) would be inappropriate.

(b) by deleting paragraph (c)

Justification

95. The paragraph provides that the Equalisation Fund Board is capable of borrowing money or making investments. The rationale for the amendment is that the fund is a special fund established under the Constitution to be utilised to enhance the provision of basic services in marginalised areas and contemplating using such funds in the manner provided under paragraph (b) would be inappropriate.

CLAUSE 7

96. **THAT** Clause 7 of the Bill be amended

(a) in sub-clause (1)

(i) by deleting the words "from a marginalized community appointed" appearing immediately after the word "chairperson" under paragraph (a)

Justification

97. The paragraph provides that the Board shall comprise of a Chairperson from a marginalized community appointed. The rationale for the amendment is that a chairperson appointed from a minority community may not be impartial where he or she oversees disbursement of funds meant for marginalised areas.

(ii) by inserting the words “or a person designated in writing by the Principal Secretary” immediately after the word “water” appearing in paragraph (b)

Justification

98. The rationale for the amendment is to empower a principal secretary to appoint a person to attend the meetings of the Board where he or she cannot attend in person.

(iii) by inserting the words “or a person designated in writing by the Principal Secretary” immediately after the word “roads” appearing in paragraph (c)

Justification

99. The rationale for the amendment is to empower a principal secretary to appoint a person to attend the meetings of the Board where he or she cannot attend in person.

(iv) by inserting the words “or a person designated in writing by the Principal Secretary” immediately after the word “health” appearing in paragraph (d)

Justification

100. The rationale for the amendment is to empower a principal secretary to appoint a person to attend the meetings of the Board where he or she cannot attend in person.

(v) by inserting the following new paragraph immediately after paragraph (d)

“(da) the Principal Secretary in the Ministry for the time being responsible for matters relating to National Treasury or a person designated in writing by the Principal Secretary;”

Justification

101. The rationale for the amendment is to include a the principal secretary responsible for matters relating to energy as a member of the Board because to oversee the implementation of projects to improve access to electricity services as provided for under Article 204 of the Constitution.

(vi) by deleting the paragraph (f) and substituting therefor the following new paragraph –

- (f) three persons appointed by the Cabinet Secretary for the time being responsible for the National Treasury to represent marginalized areas;

Justification

102. The rationale for the amendment is to provide that the principal secretary in charge of the National Treasury appoints persons representing marginalised areas in accordance with Article 204 and reduce the number of persons from four to three to accommodate the inclusion of the principal secretary responsible for matters relating to energy as a member of the Board.

- (b) in subclause (4) by deleting the word “ten” appearing immediately after the word “exceeding” and substituting therefor the words “one hundred” under paragraph (d)

CLAUSE 8

103. **THAT** Clause 8 of the Bill be amended in paragraph (c) in paragraph (c) by inserting the word “engineering” appearing immediately after the word “accounting,” under sub paragraph (iv) by —

- (a) inserting the following new sub-paragraph immediately after sub-paragraph (iv)—
(v) engineering;
(b) renumbering the exist sub-paragraph (v) as (vi).

Justification

104. The rationale for the amendment is to provide for engineering as one of the professional qualifications to be appointed as a board member on the grounds that the Fund is to provide for improvement of electricity as one of the basic services and therefore it would be an essential qualification.

CLAUSE 9

105. **THAT** Clause 9 of the Bill be amended by deleting clause 9 and substituting therefor the following new clause

“9. The chairperson and members of the Board shall hold office for a term of three years and shall be eligible for reappointment for one further and final term of three years.”

Justification

106. The rationale for the amendment is to provide that the term of persons appointed to serve on the Board shall be three years renewable once on the basis that the Fund has a lifespan of twenty years under the Constitution.

CLAUSE 10

107. **THAT** Clause 10 of the Bill be amended by inserting the words “and approve” immediately after the word “consider” under paragraph (b)

Justification

108. The rationale for the amendment is to include approval of projects by the Board as one of its functions in harmony with clause 25 that provides that the Board shall scrutinize and approve projects of the Local Committee.

CLAUSE 16

109. **THAT** Clause 16 of the Bill be amended by deleting clause 16 and substituting therefor the following new clause

“(2) The Chief Executive Officer shall hold office for a term of three years and shall be eligible for re-appointment for one further and final term of three years.”

CLAUSE 20

110. **THAT** Clause 20 of the Bill be amended in sub-clause (1)

(a) by deleting the word “ward” and substituting therefor the word “Constituency”

Justification

111. The rationale for the amendment is to provide that the Constituency shall be the administrative unit for establishment of a Local Committee to limit the cost and number that would be incurred if the Local Committee was established under the Ward

(b) in sub clause (2) by deleting paragraph (g)

Justification

112. The rationale for the amendment is to remove representation of an officer of the relevant county government from the Committee in light of the fact that Article 204 of the Constitution states that it is the national government that shall implement the Fund.

CLAUSE 21

113. **THAT** Clause 21 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause:-

(1) A person may present a petition to the Board for the dissolution of a Local Committee setting out the alleged facts constituting any one or more of the following grounds for dissolution—

- (a) serious violation of the Constitution or any other law including a contravention of Chapter Six;
- (b) gross misconduct, whether in performance of the members' or office holders' functions or otherwise;
- (c) incompetence; or
- (d) any other cause as may be deemed justifiable.

Justification

114. The rationale for the amendment is to remove bankruptcy as ground for dissolution of a Local Committee because the Committee is not a legal or juristic person and therefor incapable of being bankrupt and to amend paragraph (b) to provide for gross misconduct of all members of the Committee as a ground for dissolution.

CLAUSE 22

115. **THAT** Clause 22 of the Bill be amended by inserting the words “with the approval of the Board” immediately after the word “staff”

Justification

116. The rationale for the amendment is to provide that the Local Committee may only hire staff with the approval of the Board.

CLAUSE 23

117. **THAT** Clause 23 of the Bill be amended by deleting in sub-clause (2) the word “Ward” and substituting therefor the following new, word “Constituency”

(2) Despite subsection (1), the Committee shall before identifying the projects, receive presentations from marginalized areas within the constituency.

Justification

118. The rationale for the amendment is to provide that the Constituency shall be the administrative unit for identification of a project by the Local Committee to ensure harmony with national government structures.

CLAUSE 26

119. **THAT** Clause 26 of the Bill be amended
- (a) in paragraph (a) by deleting word “and”;
 - (b) inserting the following new paragraph immediately after paragraph (ba)
 - (c) status of implementation of projects.

Justification

120. The rationale for the amendment is to ensure that shall submit the status of implementation of projects in its summary of the quarterly report to the National Assembly.

CLAUSE 28

121. **THAT** Clause 28 of the Bill be amended by inserting the word “Asset” immediately after the word “and”

Justification

122. The rationale for the amendment is to correct a typographical error and provide for the correct citation of the Public Procurement and Asset Disposal Act, 2015

CLAUSE 31

123. **THAT** Clause 31 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (5)

“(4) The Board shall set aside a sum not exceeding five per centum of the total allocation for the Fund to cater for the administration expenses of the Board.

(5) The Board shall ensure that a sum not exceeding five per centum of the total allocation for a project shall be utilised for the administration expenses of the project.”

Justification

124. The rationale for the amendment is to put a cap on the amount of money that can be spent on administration expenses.

CLAUSE 32

125. **THAT** Clause 32 of the Bill be amended by deleting the words “At least four months before” and substituting therefor the words “Within the period of three months after”.

Justification

126. The rationale for the amendment is to harmonize the submission of accounts to the Auditor General with the requirements of the Public Finance Management Act and the Public Audit Act.

CLAUSE 35

127. **THAT** Clause 35 of the Bill be amended by deleting the words “line ministries” and substituting therefor the words “Local Committees” appearing immediately after the words “accounts of” under paragraph (3).

Justification

128. The rationale for the amendment is to ensure efficient distribution of Funds for projects from Central Bank of Kenya to the Local Committees for project implementation.

SCHEDULE

129. **THAT the SCHEDULE** of the Bill be amended by deleting the word “consensus” and substituting therefor the words “voting through simple majority” appearing immediately after the words “reached by” under paragraph (4)

Justification

130. The rationale for the amendment is to ensure that the Board may make a decision by voting through simple majority where there is no unanimous decision.

SIGNED.......... DATE.....30/10/19.....

THE HON. JOSEPH LIMO, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

ANNEXTURES

1.MINUTES OF THE 60TH SITTING

2.MINUTES OF THE 2ND SITTING

3.MINUTES OF THE 1ST SITTING

4.ADOPTION SCHEDULE

MINUTES OF THE 60TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON TUESDAY, 29TH OCTOBER, 2019 IN 4TH FLOOR PROTECTION HOUSE AT 09.30 AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Jimmy O. Angwenyi, MGH, MP
3. Hon. Abdul Rahim Dawood, MP
4. Hon. Andrew A. Okuome, MP
5. Hon. David M. Mboni, MP
6. Hon. Francis K. Kimani, MP
7. Hon. Joseph M. Oyula, MP
8. Hon. Joshua C. Kandie, MP
9. Hon. Mohamed A. Mohamed, MP
10. Hon. Purity Ngirici, MP
11. Hon. Samuel Atandi, MP
12. Hon. Stanley M. Muthama, MP

ABSENT WITH APOLOGY

1. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
2. Hon. Daniel E. Nanok, MP
3. Hon. Edith Nyenze, MP

ABSENT

1. Hon. Christopher Omulele, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Shakeel Shabbir Ahmed, CBS, MP
4. Hon. Lydiah Mizighi, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Lead Clerk
2. Ms. Jennifer Ndeto - Principal Legal Counsel
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Mr. Josephat Motonu - Fiscal Analyst I
5. Mr. Chelang'a Maiyo - Research Officer II
6. Ms. Christine Maeri - Audio Officer
7. Mr. John Njoro - Serjeant-At-Arms
8. Mr. Vitalis Augo - Office Assistant
9. Mr. Faustine Rotich - Intern

AGENDA

1. Prayers
2. Preliminaries/Introductions/Communication from the Chairperson
3. Confirmation of Minutes

4. Matters Arising
 5. **Meeting to adopt the reports on the consideration of:-**
 - i. **The Equalisation Fund Bill, 2019;**
 - ii. **The Parliamentary Pensions (Amendment) Bill (N.A. Bills No. 45 of 2019); and**
 - iii. **The Parliamentary Pensions (Amendment) Bill (N.A. Bills No. 56 of 2019).**
 6. Adjournment/ Date of the next meeting
- MIN.NO.NA/F&NP/2019/327: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The Chairperson called the meeting to order at 09.48 am and a prayer was said. The Chairperson then invited Members to deliberate on the day's agenda.

MIN.NO.NA/F&NP/2019/328: CONFIRMATION OF MINUTES
Agenda deferred

MIN.NO.NA/F&NP/2019/329: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE EQUALISATION FUND BILL, 2019

The Committee adopted the report on the consideration of the Equalisation Fund Bill, 2019 having been proposed and seconded by Hon. Andrew Okuome, MP and Hon. Joseph Oyula, MP respectively. The Committee proposed the following amendments to be considered in the Committee of the Whole House:-

CLAUSE 6

THAT Clause 6 of the Bill be amended in sub-clause (2)

- (a) by deleting the word "charging" appearing immediately after the word "holding," under paragraph (b)

Justification

The paragraph provides that the Equalisation Fund Board is capable of charging movable and immovable property belonging to the Board. The rationale for the amendment is that the fund is a special fund established under the Constitution to be utilised to enhance the provision of basic services in marginalised areas and contemplating using such funds in the manner provided under paragraph (b) would be inappropriate.

- (b) by deleting paragraph (c)

Justification

The paragraph provides that the Equalisation Fund Board is capable of borrowing money or making investments. The rationale for the amendment is that the fund is a special fund is that the fund is a special fund established under the Constitution to be utilised to enhance the provision of basic services in marginalised areas and contemplating using such funds in the manner provided under paragraph (b) would be inappropriate.

CLAUSE 7

THAT Clause 7 of the Bill be amended

- (a) in sub-clause (1)
 - (i) by deleting the words "from a marginalized community appointed" appearing immediately after the word "chairperson" under paragraph (a)

Justification

The paragraph provides that the Board shall comprise of a Chairperson from a marginalized community appointed. The rationale for the amendment is that a chairperson appointed from a minority community may not be impartial where he or she oversees disbursement of funds meant for marginalised areas.

- (ii) by inserting the words “or a person designated in writing by the Principal Secretary” immediately after the word “water” appearing in paragraph (b)

Justification

The rationale for the amendment is to empower a principal secretary to appoint a person to attend the meetings of the Board where he or she cannot attend in person.

- (iii) by inserting the words “or a person designated in writing by the Principal Secretary” immediately after the word “roads” appearing in paragraph (c)

Justification

The rationale for the amendment is to empower a principal secretary to appoint a person to attend the meetings of the Board where he or she cannot attend in person.

- (iv) by inserting the words “or a person designated in writing by the Principal Secretary” immediately after the word “health” appearing in paragraph (d)

Justification

The rationale for the amendment is to empower a principal secretary to appoint a person to attend the meetings of the Board where he or she cannot attend in person.

- (v) by inserting the following new paragraph immediately after paragraph (d)

“(da) the Principal Secretary in the Ministry for the time being responsible for matters relating to National Treasury or a person designated in writing by the Principal Secretary;”

Justification

The rationale for the amendment is to include a the principal secretary responsible for matters relating to energy as a member of the Board because to oversee the implementation of projects to improve access to electricity services as provided for under Article 204 of the Constitution.

- (vi) by deleting the paragraph (f) and substituting therefor the following new paragraph –

(f) three persons appointed by the Cabinet Secretary for the time being responsible for the National Treasury to represent marginalized areas;

Justification

The rationale for the amendment is to provide that the principal secretary in charge of the National Treasury appoints persons representing marginalised areas in accordance with Article 204 and reduce the number of persons from four to three to accommodate the inclusion of the principal secretary responsible for matters relating to energy as a member of the Board.

- (b) in subclause (4) by deleting the word “ten” appearing immediately after the word “exceeding” and substituting therefor the words “one hundred” under paragraph (d)

CLAUSE 8

THAT Clause 8 of the Bill be amended in paragraph (c) in paragraph (c) by inserting the word “engineering” appearing immediately after the word “accounting,” under sub paragraph (iv) by —

- (a) inserting the following new sub-paragraph immediately after sub-paragraph (iv)—
(v) engineering;
(b) renumbering the exist sub-paragraph (v) as (vi).

Justification

The rationale for the amendment is to provide for engineering as one or the professional qualifications to be appointed as a board member on the grounds that the Fund is to provide for improvement of electricity as one of the basic services and therefore it would be an essential qualification.

CLAUSE 9

THAT Clause 9 of the Bill be amended by deleting clause 9 and substituting therefor the following new clause

“9. The chairperson and members of the Board shall hold office for a term of three years and shall be eligible for reappointment for one further and final term of three years.”

Justification

The rationale for the amendment is to provide that the term of persons appointed to serve on the Board shall be three years renewable once on the basis that the Fund has a lifespan of twenty years under the Constitution.

CLAUSE 10

THAT Clause 10 of the Bill be amended by inserting the words “and approve” immediately after the word “consider” under paragraph (b)

Justification

The rationale for the amendment is to include approval of projects by the Board as one of its functions in harmony with clause 25 that provides that the Board shall scrutinize and approve projects of the Local Committee.

CLAUSE 16

THAT Clause 16 of the Bill be amended by deleting clause 16 and substituting therefor the following new clause

“(2) The Chief Executive Officer shall hold office for a term of three years and shall be eligible for re-appointment for one further and final term of three years.”

CLAUSE 20

THAT Clause 20 of the Bill be amended in sub-clause (1)

- (a) by deleting the word “ward” and substituting therefor the word “Constituency”

Justification

The rationale for the amendment is to provide that the Constituency shall be the administrative unit for establishment of a Local Committee to limit the cost and number that would be incurred if the Local Committee was established under the Ward

- (b) in sub clause (2) by deleting paragraph (g)

Justification

The rationale for the amendment is to remove representation of an officer of the relevant county government from the Committee in light of the fact that Article 204 of the Constitution states that it is the national government that shall implement the Fund.

CLAUSE 21

THAT Clause 21 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause:-

(1) A person may present a petition to the Board for the dissolution of a Local Committee setting out the alleged facts constituting any one or more of the following grounds for dissolution—

- (a) serious violation of the Constitution or any other law including a contravention of Chapter Six;
- (b) gross misconduct, whether in performance of the members’ or office holders’ functions or otherwise;
- (c) incompetence; or
- (d) any other cause as may be deemed justifiable.

Justification

The rationale for the amendment is to remove bankruptcy as ground for dissolution of a Local Committee because the Committee is not a legal or juristic person and therefor incapable of being bankrupt and to amend paragraph (b) to provide for gross misconduct of all members of the Committee as a ground for dissolution.

CLAUSE 22

THAT Clause 22 of the Bill be amended by inserting the words “with the approval of the Board” immediately after the word “staff”

Justification

The rationale for the amendment is to provide that the Local Committee may only hire staff with the approval of the Board.

CLAUSE 23

THAT Clause 23 of the Bill be amended by deleting in sub-clause (2) the word “Ward” and substituting therefor the following new, word “Constituency”

(2) Despite subsection (1), the Committee shall before identifying the projects, receive presentations from marginalized areas within the constituency.

Justification

The rationale for the amendment is to provide that the Constituency shall be the administrative unit for identification of a project by the Local Committee to ensure harmony with national government structures.

CLAUSE 26

THAT Clause 26 of the Bill be amended

- (a) in paragraph (a) by deleting word “and”;
- (b) inserting the following new paragraph immediately after paragraph (ba)
- (c) status of implementation of projects.

Justification

The rationale for the amendment is to ensure that shall submit the status of implementation of projects in its summary of the quarterly report to the National Assembly.

CLAUSE 28

THAT Clause 28 of the Bill be amended by inserting the word “Asset” immediately after the word “and”

Justification

The rationale for the amendment is to correct a typographical error and provide for the correct citation of the Public Procurement and Asset Disposal Act, 2015

CLAUSE 31

THAT Clause 31 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (5)

“(4) The Board shall set aside a sum not exceeding five per centum of the total allocation for the Fund to cater for the administration expenses of the Board.

(5) The Board shall ensure that a sum not exceeding five per centum of the total allocation for a project shall be utilised for the administration expenses of the project.”

Justification

The rationale for the amendment is to put a cap on the amount of money that can be spent on administration expenses.

CLAUSE 32

THAT Clause 32 of the Bill be amended by deleting the words “At least four months before” and substituting therefor the words “Within the period of three months after”.

Justification

The rationale for the amendment is to harmonize the submission of accounts to the Auditor General with the requirements of the Public Finance Management Act and the Public Audit Act.

CLAUSE 35

THAT Clause 35 of the Bill be amended by deleting the words “line ministries” and substituting therefor the words “Local Committees” appearing immediately after the words “accounts of” under paragraph (3).

Justification

The rationale for the amendment is to ensure efficient distribution of Funds for projects from Central Bank of Kenya to the Local Committees for project implementation.

SCHEDULE

THAT the SCHEDULE of the Bill be amended by deleting the word “consensus” and substituting therefor the words “voting through simple majority” appearing immediately after the words “reached by” under paragraph (4)

Justification

The rationale for the amendment is to ensure that the Board may make a decision by voting through simple majority where there is no unanimous decision.

MIN.NO.NA/F&NP/2019/330: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL (N.A. BILLS NO. 45 OF 2019)

The Committee adopted the report on the above mentioned Bill having been proposed and seconded by Hon. Rahim Dawood, MP and Hon. David Mboni, MP respectively. The Committee proposed the following amendments to be considered in the Committee of the Whole House:-

CLAUSE 2

THAT, the Bill be amended by deleting clause 2 and substituting therefor the following new clause-

2. Section 8 of the Parliamentary Pensions Act is amended—

- (a) in sub-section (1) (b) by deleting the word “two” and substituting therefor the word “one”; and
- (b) by inserting the following new subsection immediately after subsection (2)-
“(3)Notwithstanding subsection (2), a former Member of Parliament who, having served in Parliament between 1st July, 1984 and 1st January, 2001 and is entitled to pension under this section, and whose monthly pension amounts to less than one hundred thousand shillings, shall be entitled, with effect from 1st July, 2010, to a monthly pension of one hundred thousand shilling.”

Justification

This is to improve the living standards of the former Members of Parliament substantively.

MIN.NO.NA/F&NP/2019/331: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL (N.A. BILLS NO. 56 OF 2019)

The Committee adopted the report of the Bill having been proposed and seconded by Hon. Andrew Okuome, MP and Hon. Joseph Oyula, MP respectively. The Committee proposed the following amendment to be considered in the Committee of the Whole House:-

CLAUSE 2

THAT, the Bill be amended by deleting clause 2 and substituting therefor the following new clause-

2. Section 8 of the Parliamentary Pensions Act is amended—

(a) in sub-section (1) (b) by deleting the word “two” and substituting therefor the word “one”; and

(b) by inserting the following new subsection immediately after subsection (2)-

(3) Notwithstanding subsection (2), a former Member of Parliament who, having served in Parliament between 1st July, 1984 and 1st January, 2001 and is entitled to pension under this section, and whose monthly pension amounts to less than one hundred thousand shillings, shall be entitled, with effect from 1st July, 2010, to a monthly pension of one hundred thousand shilling.

MIN.NO.NA/F&NP/2019/332: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 11.38 a.m. The next meeting will be held on Tuesday, 3rd November, 2019 at 10.00 a.m.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED  DATE 30/10/19

MINUTES OF THE 2ND SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON FRIDAY 4TH OCTOBER, 2019 IN MUDUGUINI ROOM, PRIDEINN HOTEL AT 3:15 PM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Jimmy O. Angwenyi, MGH, MP
3. Hon. Christopher Omulele, MP
4. Hon. Daniel E. Nanok, MP
5. Hon. David M. Mboni, MP
6. Hon. Purity Ngirici, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. Joseph M. Oyula, MP
9. Hon. Stanley M. Muthama, MP
10. Hon. Edith Nyenze, MP
11. Hon. Joshua C. Kandie, MP

ABSENT WITH APOLOGY

1. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
2. Hon. Shakeel Shabbir Ahmed, CBS, MP
3. Hon. Abdul Rahim Dawood, MP
4. Hon. Francis K. Kimani, MP
5. Hon. Samuel Atandi, MP

ABSENT

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Lydiah Mizighi, MP
3. Hon. Mohamed A. Mohamed, MP

INATTENDANCE

COMMITTEE SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Lead Clerk
2. Mr. Josephat Motonu - Fiscal Analyst I
3. Mr. Sidney Lugaga - Legal Counsel I
4. Mr. Chelang'a Maiyo - Research Officer II
5. Joseph Kimani - Secretary
6. Mr. Stephen Nyakuti - Audio Officer
7. Mr. John Njoro - Serjeant-At-Arms
8. Mr. Vitalis Augo - Office Assistant

AGENDA

1. Prayers
2. Preliminaries/Introductions/Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising

5. **Consideration of the Equalization Fund Bill, 2019**
6. **Consideration of the Kenya Uwezo Fund Bill, 2019**
7. **Consideration of the Public Procurement and Asset Disposal (Amendment) Bill, 2019**
8. Adjournment/ Date of the next meeting

MIN.NO.NA/F&NP/2019/05: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The Chairperson called the meeting to order at 3.15 p.m and a prayer was said. The Chairperson then called Members to continue deliberations on the Equalization Bill, 2019.

MIN.NO.NA/F&NP/2019/06: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2019/07: CLAUSE BY CLAUSE CONSIDERATION OF THE EQUALIZATION FUND BILL, 2019

The Chairperson invited the Legal Counsel to continue taking Members through the above mentioned Bill. Upon deliberation the Committee resolved as follows:-

CLAUSE 23

THAT Clause 23 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause,

“(2) Despite subsection (1), the Committee shall before identifying the projects, receive presentations from marginalized areas within the constituency.”

JUSTIFICATION

The rationale for the amendment is to provide that the Constituency shall be the administrative unit for identification of a project by the Local Committee to ensure harmony with national government structures

CLAUSE 24: Agreed to

CLAUSE 25: Agreed to

CLAUSE 26

THAT Clause 26 of the Bill be amended

- (a) in paragraph (a) by deleting word “and”;
- (b) inserting the following new paragraph immediately after paragraph (a)

“(c) status of implementation of projects.”

JUSTIFICATION

The rationale for the amendment is to ensure that shall submit the status of implementation of projects in its summary of the quarterly report to the National Assembly.

CLAUSE 27: Agreed to

CLAUSE 28

THAT Clause 28 of the Bill be amended by inserting the word “Asset” immediately after the word “and”.

JUSTIFICATION

The rationale for the amendment is to correct a typographical error and provide for the correct citation of the Public Procurement and Asset Disposal Act, 2015.

CLAUSE 29: Agreed to

CLAUSE 30: Agreed to

CLAUSE 31

THAT Clause 31 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (5).

“(4) The Board shall set aside a sum not exceeding five per centum of the total allocation for the Fund to cater for the administration expenses of the Board.

(5) The Board shall ensure that a sum not exceeding five per centum of the total allocation for a project shall be utilised for the administration expenses of the project.”

JUSTIFICATION

The rationale for the amendment is to put a cap on the amount of money that can be spent of administration expenses of.

CLAUSE 32

THAT Clause 32 of the Bill be amended by deleting the words “At least four months before” and substituting therefor the words “Within the period of three months after”.

JUSTIFICATION

The rationale for the amendment is to harmonize the submission of accounts to the Auditor General with the requirements of the Public Finance Management Act and the Public Audit Act.

CLAUSE 33: Agreed to

CLAUSE 34: Agreed to

CLAUSE 35

THAT Clause 35 of the Bill be amended by deleting the words “line ministries” and substituting therefor the words “Local Committees” appearing immediately after the words “accounts of” under paragraph (3)

JUSTIFICATION

The rationale for the amendment is to ensure efficient distribution of Funds for projects from Central Bank of Kenya to the Local Committees for project implementation.

CLAUSE 36: Agreed to

CLAUSE 37: Agreed to

CLAUSE 38: Agreed to

CLAUSE 39: Agreed to

CLAUSE 40: Agreed to

CLAUSE 41: Agreed to

SCHEDULE

THAT the SCHEDULE of the Bill be amended by deleting the word “consensus” and substituting therefor the words “voting through simple majority” appearing immediately after the words “reached by” under paragraph (4)

JUSTIFICATION

The rationale for the amendment is to ensure that the Board may make a decision by voting through simple majority where there is no unanimous decision.

MIN.NO.NA/F&NP/2019/08: ANY OTHER BUSINESS
No other business arose.

MIN.NO.NA/F&NP/2019/09: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 7.20 p.m. The next meeting will be held on Saturday, 5th October, 2019 at 10.00 a.m.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED  DATE..... 30/10/19

MINUTES OF THE 1ST SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON FRIDAY 4TH OCTOBER, 2019 IN MUDUGUINI ROOM, PRIDEINN HOTEL AT 9:00 AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Jimmy O. Angwenyi, MGH, MP
3. Hon. Christopher Omulele, MP
4. Hon. Daniel E. Nanok, MP
5. Hon. David M. Mboni, MP
6. Hon. Purity Ngirici, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. Joseph M. Oyula, MP
9. Hon. Stanley M. Muthama, MP
10. Hon. Edith Nyenze, MP
11. Hon. Joshua C. Kandie, MP

ABSENT WITH APOLOGY

1. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
2. Hon. Shakeel Shabbir Ahmed, CBS, MP
3. Hon. Abdul Rahim Dawood, MP
4. Hon. Francis K. Kimani, MP
5. Hon. Samuel Atandi, MP

ABSENT

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Lydiah Mizighi, MP
3. Hon. Mohamed A. Mohamed, MP

INATTENDANCE

COMMITTEE SECRETARIAT

- | | | |
|------------------------|---|-----------------------------------|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/Lead Clerk |
| 2. Mr. Josephat Motonu | - | Fiscal Analyst |
| 3. Mr. Sidney Lugaga | - | Legal Counsel I |
| 4. Mr. Chelang'a Maiyo | - | Research Officer II |
| 5. Joseph Kimani | - | Secretary |
| 6. Mr. Stephen Nyakuti | - | Audio Officer |
| 7. Mr. John Njoro | - | Serjeant-At-Arms |
| 8. Mr. Vitalis Augo | - | Office Assistant |

AGENDA

1. Prayers
2. Preliminaries/Introductions/Communication from the Chairperson

3. Confirmation of Minutes
4. Matters Arising
5. **Consideration of the Equalization Fund Bill, 2019**
6. Adjournment/ Date of the next meeting

MIN.NO.NA/F&NP/2019/01: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The Chairperson called the meeting to order at 9.28 am and a prayer was said. The agenda was then adopted having been proposed and seconded by Hon. Andrew Okuome, MP and Hon. David M. Mboni, MP respectively.

The Chairperson informed the meeting that the Committee will consider the Equalization Fund Bill, 2019 by Hon. William Kamket, MP, The Kenya Uwezo Fund Bill, 2019 by Hon. David K. Bowen, MP and the Parliamentary Public Procurement and Asset Disposal (Amendment) Bill, 2019 by Hon. Rigathi Gachagua, MP.

The Chairperson then called for introduction of those present before inviting the meeting to deliberate on the day's agenda.

MIN.NO.NA/F&NP/2019/02: CONFIRMATION OF MINUTES

There were no minutes to be confirmed.

MIN.NO.NA/F&NP/2019/03: CLAUSE BY CLAUSE CONSIDERATION OF THE EQUALIZATION FUND BILL, 2019

The Chairperson invited the Legal Counsel to take members through the above mentioned Bill and the matrix that contained the stakeholder submissions.

Upon deliberation the Committee resolved as follows:-

CLAUSE 1: Agreed to
CLAUSE 2: Agreed to
CLAUSE 3: Agreed to
CLAUSE 4: Agreed to
CLAUSE 5: Agreed to

CLAUSE 6

THAT Clause 6 of the Bill be amended in sub clause (2)

- (a) by deleting the word "charging" appearing immediately after the word "holding," under paragraph (b)

JUSTIFICATION

The paragraph provides that the Equalization Fund Board is capable of charging movable and immovable property belonging to the Board. The rationale for the amendment is that the fund is a special fund established under the Constitution to be utilized to enhance the provision of basic services in marginalized areas and contemplating using such funds in the manner provided under paragraph (b) would be inappropriate.

(b) by deleting paragraph (c)

JUSTIFICATION

The paragraph provides that the Equalisation Fund Board is capable of borrowing money or making investments. The rationale for the amendment is that the fund is a special fund is that the fund is a special fund established under the Constitution to be utilised to enhance the provision of basic services in marginalised areas and contemplating using such funds in the manner provided under paragraph (b) would be inappropriate.

CLAUSE 7

THAT Clause 7 of the Bill be amended

(a) in sub clause (1)

- (i) by deleting the words “from a marginalized community appointed” appearing immediately after the word “chairperson” under paragraph (a)

JUSTIFICATION

The paragraph provides that the Board shall comprise of a Chairperson from a marginalized community appointed. The rationale for the amendment is that a chairperson appointed from a minority community may not be impartial where he or she oversees disbursement of funds meant for marginalised areas.

- (ii) by inserting the words “or a person designated in writing by the Principal Secretary” immediately after the word “water” appearing in paragraph (b)

JUSTIFICATION

The rationale for the amendment is to empower a principal secretary to appoint a person to attend the meetings of the Board where he or she cannot attend in person.

- (iii) by inserting the words “or a person designated in writing by the Principal Secretary” immediately after the word “roads” appearing in paragraph (c)

JUSTIFICATION

The rationale for the amendment is to empower a principal secretary to appoint a person to attend the meetings of the Board where he or she cannot attend in person.

- (iv) by inserting the words “or a person designated in writing by the Principal Secretary” immediately after the word “health” appearing in paragraph (d)

JUSTIFICATION

The rationale for the amendment is to empower a principal secretary to appoint a person to attend the meetings of the Board where he or she cannot attend in person.

- (v) by inserting the following new paragraph immediately after paragraph (d)

“(da) the Principal Secretary in the Ministry for the time being responsible for matters relating to National Treasury or a person designated in writing by the Principal Secretary;”

JUSTIFICATION

The rationale for the amendment is to include the principal secretary responsible for matters relating to energy as a member of the Board because to oversee the implementation of projects to improve access to electricity services as provided for under Article 204 of the Constitution.

(vi) by deleting the paragraph (f) and substituting therefor the following new paragraph –

“(f) Five persons appointed by the Cabinet Secretary for the time being responsible for the National Treasury to represent marginalized areas;”

JUSTIFICATION

The rationale for the amendment is to provide that the principal secretary in charge of the National Treasury appoints persons representing marginalised areas in accordance with Article 204 and reduces the number of persons from four to three to ensure to accommodate the inclusion of the principal secretary responsible for matters relating to energy as a member of the Board.

(b) in sub clause (4) by deleting the word “ten” appearing immediately after the word “exceeding” and substituting therefor the words “one hundred” under paragraph (d)

CLAUSE 8

THAT Clause 8 of the Bill be amended in paragraph (c) by inserting the word “engineering” appearing immediately after the word “accounting,” under sub paragraph (iv)

JUSTIFICATION

The rationale for the amendment is to provide for engineering as one of the professional qualifications to be appointed as a board member on the grounds that the Fund is to provide for improvement of electricity as one of the basic services and therefore it would be an essential qualification.

CLAUSE 9

THAT Clause 9 of the Bill be amended by deleting clause 9 and substituting therefor the following new clause

“9. Members of the Board, including the chairperson, shall hold office for a term of three years and shall be eligible for reappointment for one further and final term of three years.”

JUSTIFICATION

The rationale for the amendment is to provide that the term of persons appointed to serve on the Board shall be three years renewable once on the basis that the Fund has a lifespan of twenty years under the Constitution.

CLAUSE 10

THAT Clause 10 of the Bill be amended by inserting the words “and approve” immediately after the word “consider” under paragraph (b)

JUSTIFICATION

The rationale for the amendment is to include approval of projects by the Board as one of its functions in harmony with clause 25 that provides that the Board shall scrutinize and approve projects of the Local Committee.

CLAUSE 11: Agreed to

CLAUSE 12: Agreed to

CLAUSE 13: Agreed to

CLAUSE 14: Agreed to

CLAUSE 15: Agreed to

CLAUSE 16

THAT Clause 16 of the Bill be amended by deleting clause 16 and substituting therefor the following new clause

“(2) The Chief Executive Officer shall hold office for a term of three years and shall be eligible for re-appointment for one further and final term of three years.”

CLAUSE 17: Agreed to

CLAUSE 18: Agreed to

CLAUSE 19: Agreed to

CLAUSE 20

THAT Clause 20 of the Bill be amended by

(a) in sub clause (1) by deleting the word “ward” and substituting therefor the word “Constituency”

JUSTIFICATION

The rationale for the amendment is to provide that the Constituency shall be the administrative unit for establishment of a Local Committee to limit the cost and number that would be incurred if the Local Committee was established under the Ward

(a) in sub clause (2) by inserting “and secretary to the Local Committee”

(b) in sub clause (2) by deleting paragraph (g)

JUSTIFICATION

The rationale for the amendment is to remove representation of an officer of the relevant county government from the Committee in light of the fact that Article 204 of the Constitution states that it is the national government that shall implement the Fund.

CLAUSE 21

THAT Clause 21 of the Bill be amended by deleting sub clause (1) and substituting therefor the following new sub clause

“(1) A person may present a petition to the Board for the dissolution of a Local Committee setting out the alleged facts constituting any one or more of the following grounds for dissolution—

- (a) serious violation of the Constitution or any other law including a contravention of Chapter Six;
- (b) gross misconduct, whether in performance of the members’ or office holders’ functions or otherwise;
- (c) incompetence; or

- (d) any other cause as may be deemed justifiable.

JUSTIFICATION

The rationale for the amendment is to remove bankruptcy as ground for dissolution of a Local Committee because the Committee is not a legal or juristic person and therefor incapable to being bankrupt and to amend paragraph (b) to provide for gross misconduct of all members of the Committee as the ground for dissolution.

CLAUSE 22

THAT Clause 22 of the Bill be amended by inserting the words “with the approval of the Board” immediately after the word “staff”

JUSTIFICATION

The rationale for the amendment is to provide that the Local Committee may only hire staff with the approval of the Board.

MIN.NO.NA/F&NP/2019/04: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 1.45 p.m. The next meeting will be that same day at 2.45 p.m.

HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)

SIGNED.....DATE.....30/10/19.....

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF THE
EQUALISATION FUND BILL, 2019

DATE: 29TH OCTOBER, 2019

NAME	SIGNATURE
1. HON. JOSEPH K. LIMO, MP – CHAIRMAN	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRMAN	
3. HON. JIMMY O. ANGWENYI, MGH, MP	
4. HON. CHRISTOPHER OMULELE, MP	
5. HON. ENOCH KIBUNGUCHY, MP	
6. HON. SHAKEEL SHABBIR AHMED, CBS, MP	
7. HON. ABDUL RAHIM DAWOOD, MP	
8. HON. DANIEL E. NANOK, MP	
9. HON. ANDREW A. OKUOME, MP	
10. HON. DAVID M. MBONI, MP	
11. HON. KURIA KIMANI, MP	
12. HON. JOSEPH M. OYULA, MP	
13. HON. JOSHUA KANDIE, MP	
14. HON. LYDIA H. MIZIGHI, MP	
15. HON. MOHAMED ALI, MP	
16. HON. PURITY NGIRICI, MP	
17. HON. SAMUEL ATANDI, MP	
18. HON. STANLEY M. MUTHAMA, MP	
19. HON. EDITH NYENZE, MP	

