Paper laid by the Chair of the Standing Committee on Finance, Commerce and Budget.
13/5/14



PARLIAMENT OF THE REPUBLIC OF KENYA

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**ELEVENTH PARLIAMENT**

**THE SENATE**

SECOND SESSION

**THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET**

# REPORT OF THE COMMITTEE ON THE DIVISION OF REVENUE BILL, 2014 (NATIONAL ASSEMBLY BILL NO. 15 OF 2014)

MAY 2014

PARLIAMENT BUILDINGS

NAIROBI

## Table of Contents

## LIST OF ACRONYMS AND ABBREVIATIONS

| | | |
|---|---|---|
| CARA | - | County Allocation of Revenue Act |
| CRA | - | Commission on Revenue Allocation |
| FY | - | Fiscal Year |
| GDP | - | Gross Domestic Product |
| IBEC | - | Inter-governmental Budget and Economic Council |
| IFMIS | - | Integrated Financial Management System |
| KNBS | - | Kenya National Bureau of Statistics |
| KRA | - | Kenya Revenue Authority |
| MTEF | - | Medium Term Expenditure Framework |
| OCOB | - | Office of the Controller of Budget |
| PFMA | - | Public Finance Management Act |
| REA | - | Rural Electrification Authority |
| TA | - | Transition Authority |

## PREFACE

### Mandate and Functions of the Committee;

**Mr. Speaker Sir,** at the core of the discharge of the oversight, legislative and representative functions in Kenya is the Legislature. The Constitution of Kenya, at Article 124, provides for the establishment of Committees by either House of Parliament. Committees are central to the workings, roles and functions of Parliament as set out at Article 94 and more specifically at article 96 of the Constitution as regards the Senate.

Parliamentary committees consider policy issues, scrutinize the work and expenditure of the national and county governments and examine proposals for legislation. The roles of Committees are twofold, investigative process and deliberative process. These processes give rise to reports on inquiry of certain issues under the purview of the mandate of a particular Committee to the House in Plenary.

**Mr. Speaker Sir,** the Standing Committee on Finance, Commerce and Budget was established pursuant to *Standing Order No. 208*. The Committee is mandated to "*investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to discuss and review the estimates of the county governments and make recommendations to the Senate, examine the Budget Policy Statement presented to the Senate, examine and report on the budgets allocated to constitutional commissions and independent offices and examine Bills related to the county budget, including the Division of Revenue Bill and examine and to consider all matters related to* *resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the national budget, including public finance, and monetary policies and public debt, trading activities and commerce, tourism, investment and divestiture policies, planning and development policy."*

**Membership of the Committees;**

**Mr. Speaker Sir,** the Fourth Schedule of the Senate Standing Orders provides that the Committee "shall consist of the Chairperson and not more than fifteen other members" The Committee is composed of the following Senators:-

1. Senator Billow Kerrow, MP **-Chairperson**
2. Senator Peter Ole Mositet, MP **-Vice- Chairperson**
3. Senator Moses Wetang'ula, MP -Member
4. Senator Beatrice Elachi, MP -Member
5. Senator Mutahi Kagwe, MP -Member
6. Senator James Mungai, MP -Member
7. Senator Catherine Mukiite Nabwala, MP -Member
8. Senator (Dr.) Boni Khalwale, MP -Member
9. Senator (Prof.) Peter Anyang Nyong'o, MP -Member
10. Senator (Prof.) John Lonyangapuo, MP -Member
11. Senator (Dr.) Wilfred Machage, MP -Member
12. Senator Zipporah Kittony, MP -Member
13. Senator Paul Njoroge Ben, MP -Member

**BACKGROUND AND EXECUTIVE SUMMARY;**

**Mr. Speaker Sir,** Article 218 of the Constitution provides that at least two months before the end of each financial year, a "Division of Revenue Bill which shall divide revenue raised by the national government among the national and county levels of government" shall be introduced in Parliament.

**Mr. Speaker Sir,** The Division of Revenue Bill (National Assembly Bill No. 15 of 2014), was published in the Kenya Gazette Supplement No. 36 of March 26, 2014 and was passed by the National Assembly on Wednesday, April 23, 2014. On 25th April, 2014, the National Assembly submitted to the Senate, the Division of Revenue Bill, 2014 (National Assembly Bill No. 15 of 2014) by way of Message pursuant to the provisions of Standing Order 142 of the National Assembly Standing Orders.

The message was communicated to all Senators, pursuant to Standing Order 40(5) of the Senate on April 28, 2014. The National Assembly now seeks the concurrence of the Senate to the said Bill as passed by the National Assembly.

**Mr. Speaker Sir,** Standing Order No. 148 of the Senate Standing Orders requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of *First Reading* in accordance with Standing Order No. 129.

The Division of Revenue Bill was read a First Time at a special sitting of the Senate on 6th May, 2014. The Bill was committed to the Standing Committee on Finance, Commerce and Budget pursuant to standing order 130 (1) of the Senate standing orders.

**Mr. Speaker Sir,** in its consideration of the Bill, the Standing Committee invited key stakeholders, including the National Treasury, the Council of Governors and the Commission on Revenue Allocation who provided their submissions to the Committee.

In accordance with Article 118 (1) (b) of the Constitution and standing order 130 (4) of the Senate, the Standing Committee facilitated public participation and took into account the views and recommendations of the public in its report to the Senate.

**Mr. Speaker Sir,** this report is hereby submitted to the Senate for its consideration and adoption pursuant to standing order 134 (1) as read together with standing order 160(3) which states that the Senate shall conclude its consideration of a Division of Revenue Bill not later than ten days after the Bill has been introduced.

## SUMMARY OF RECOMMENDATIONS;

**Mr. Speaker Sir,** following consideration of the Bill, the Committee makes the following recommendations:-

### 1. Provision of Funds for Level 5 Hospitals:-

The Committee recommends that the national government allocation includes adequate financing for level 5 hospitals as currently listed, in accordance with Article 187 (2) and 203(1)(d) of the Constitution.

### 2. Unbundling and Costing of Functions at both Levels of Government:-

In accordance with Section 7 (2) (a) and (b) of the Transition to Devolved Government Act, 2012, the Committee recommends that the Transition Authority fast-tracks the process of unbundling and costing of functions so as to enable the determination of resource requirements for each of the functions.

The Committee further recommends that this exercise be completed by 31st December, 2014 in order to inform the Division of Revenue Bill, 2015.

### 3. Recommendations and amendments to the Bill

The Committee recommends that the Senate adopts the following amendments to the Bill:

### 1. Provision of Funds for Level 5 Hospitals:-

The Committee recommends that the national government allocation includes adequate financing for level 5 hospitals as currently listed, in accordance with Article 187 (2) and 203(1)(d) of the Constitution.

### 2. Unbundling and Costing of Functions at both Levels of Government:-

In accordance with Section 7 (2) (a) and (b) of the Transition to Devolved Government Act, 2012, the Committee recommends that the

Transition Authority fast-tracks the process of unbundling and costing of functions so as to enable the determination of resource requirements for each of the functions.

The Committee further recommends that this exercise be completed by 31st December, 2014 in order to inform the Division of Revenue Bill, 2015.

## 3. Amendments to the Bill

The Committee recommends that the Senate adopts the following amendments to the Bill:-

**CLAUSE 4**

**THAT** Clause 4 of the Bill be amended-

(a) by renumbering the existing provision as Clause 4(1);

(b) by inserting the following new sub-clause immediately after the renumbered provision;

> (2) In accordance with the provisions of Article 187(2) and Article 203(1)(d) of the Constitution, and for further certainty, the allocation for the national government under sub clause (1) includes adequate financing for all Level 5 Hospitals as currently listed.

**SCHEDULE**

**THAT** the Bill be amended by deleting the Schedule and substituting therefor the following new Schedule -

**SCHEDULE**

**ALLOCATION OF REVENUE RAISED NATIONALLY BETWEEN THE NATIONAL AND COUNTY GOVERNMENTS FOR FINANCIAL YEAR 2014/15**

| Type / Level of allocation | Amount in Kshs. billions |
|---|---|
| **Total Shareable Revenue** | **1,026.31** |
| **A. National Allocation** | **799.65** |
| *of which;* | |
| Economic Stimulus Package [1] | **1.45** |
| Equalization fund | **3.4** |
| **B. County Allocation [2]** | **226.66** |

**Note**

[1] *For completion of centers of excellence under the Economic Stimulus Package in all 290 constituencies (5 million per constituency)*

[2] *Based on 2009/10 audited revenues approved by the National Assembly, the County Allocation of Kshs. 226.66 billion represents 43% of the audited national revenues of Kshs. 529.3 billion.*

**ACKNOWLEDGEMENTS;**

**Mr. Speaker Sir,** I wish to thank all Committee Members who showed dedication and commitment during the long deliberations that the Committee had with various stakeholders on this Bill.

**Mr. Speaker Sir,** I wish to thank the National Treasury, the Commission on Revenue Allocation, the Council of Governors, the institutions and members of the public who made their insightful contributions and recommendations to the Bill on short notice.

**Mr. Speaker Sir,** special gratitude goes to the Office of the Speaker and the Clerk of the Senate for the support and guidance provided to the Committee during deliberations on the Bill that enabled the Committee to effectively discharge its mandate.

**Signed: ..............................................................**

**Senator Billow Kerrow, MP**

**Chairperson, Standing Committee on Finance Commerce and Budget.**

**Date: ...13th.......... day of ...May..........., 2014.**

# CHAPTER 1: SUBMISSIONS FROM STAKEHOLDERS

This Chapter presents the deliberations of the Committee with various stakeholders including, the National Treasury, the Commission on Revenue Allocation and the Council of Governors. It also highlights the views and recommendations of the Public submitted during the public hearing conducted on Friday 9th May, 2014.

## 1.1 MEETING WITH THE NATIONAL TREASURY

The Committee held a meeting with the National Treasury on 8th May, 2014 and was informed as follows:-

i. The recommended national allocation of 799 billion and county government allocation of 226 billion was a compromise that was arrived at following several intense negotiations between key stakeholders and significant compromises made by all involved parties.

ii. The bill considers the provision that revenue allocation to the counties should be at least 15% of nationally raised revenue calculated on the basis of the latest audited and parliament approved accounts in line with Article 203 of the constitution. The last audited revenues approved by the National Assembly were those of 2009/2010 and that based on those revenue figures, the allocation to counties stood at 43%.

iii. If the county allocation of 226 billion were to be revised upwards, the national government would be forced to significantly borrow from the local market and that the National Treasury's appeal to the Senate was that the proposed figure of 226 billion be approved as it had been the result of very hard fought negations.

iv. On wastage the Committee heard that the President had constituted a team headed by the Cabinet Secretary for the Ministry of Mining, Hon. Najib Balala to try and find ways to address wastage in the public service with a view to reduce costs. The team made budget cuts in the areas of travel allowance and recommended freezing of purchase of vehicles in the public service. The national government was committed to the reduction of wastage of resources and that county governments should follow suit in this endeavor.

v. The National Treasury in conjunction with the CRA and TA had undertaken an analysis of the functions in FY 2013/2014. In the analysis, all ministries and departments undertook a line by line analysis of their budgets against the functions with a view to costing them. The costing process revealed that there was need to provide separately for Level 5 hospitals as was provided for in the Division of Revenue Act of 2013. In the Division of Revenue Bill, 2014, 10 billion had been earmarked for the same purpose, however Governors, at an IBEC meeting held in February, 2014 were not in favour of this decision and subsequently, the amount was cut to 3.4 billion shillings. This amount was later moved to become part of shareable revenue on the request of Governors to allow counties fund their own hospitals from this amount as well as any other collected revenue.

vi. The National Treasury had written to the Transition Authority requesting for the gazettement of functions so as to facilitate the budgeting process by ensuring assignment of resources to all unbundled functions. This was not carried out and as such, contributed to some of the challenges of duplication of functions at both levels of government. With regard to other "national functions", the committee was informed that these were projects with national implications and the details of these would appear in the national estimates.

## 1.2 MEETING WITH THE COMMISSION ON REVENUE ALLOCATION

The Committee held a meeting with the Commission on Revenue Allocation to deliberate on the Bill on 8th May, 2014 whose submission to the Committee were as follows:-

i. CRA recommendations factored were based on a historical costing approach which provides for analysis of ministry budgets for FY 2012/13 and 2014/2015 cost of devolved functions plus a percentage for administration cost which provided for 230.893 billion.

ii. Remuneration and administrative costs for the operations of county assemblies and county executive of 48.269 billion was added to the 230.893 billion. To arrive at a total cost of devolved functions of 279.162 billion.

iii. The IBEC Budget Committee negotiated recommendations on Vertical Share for FY 2014/2015which totaled 238.227billion factored in the following.

   a) Equitable Share 2013/14- 190.000 billion;

   b) Less cost of remunerations & Administration of new county structures – 13.622 billion.

   c) Cost of Devolved functions for FY 2013/14- 176.378 billion.

   d) Add cost of administration for Devolved Functions (15% of Remuneration)- 7.083 billion.

   e) Adjust for revenue growth at 11.5% - 20.283 billion.

   f) Add Pension for Devolved Staff (15% of 60% Remuneration)- 4.250 billion.

   g) Add Cost of New County Structures – 30.233 billion.

iv. There was need for the Senate to provide for some conditional grant for level 5 hospitals, to ensure that they were held harmless.

## 1.3 MEETING WITH THE COUNCIL OF GOVERNORS

On 20th March, 2014, the Committee had held a meeting with the Council of Governors to deliberate on the proposals for the Division of Revenue Bill, 2014 and during its meeting held on 8th May, 2014, the Committee reviewed its submission from the Council of Governors as follows:-

1. The main area of contention was the criterion used in arriving at the base figure of Kshs. 190 billion, which was not based on the actual costing of functions by the National Treasury. It was alleged that TA which was mandated by law to undertake this assignment had not been adequately facilitated to perform the task. The National Treasury argues that this was the base used in the last Financial Year's budget and therefore it was the most logical figure.

2. The National Treasury urged that the assumption that growth of revenues ought to be based on the projected rate of 6%, instead of 11.5 % growth.

3. The Council of Governors and the Commission of Revenue (CRA) were in agreement with 238 billion as the equitable share of national revenue by county governments while the National Treasury had 221 billion. The argument was that this figure was based on the historical costing arising from figures derived from the FY 2012/2013 per ministry based on historical expenses of all devolved functions.

4. The National Treasury had participated in the IBEC technical committees, together with the Commission on the Implementation of the Constitution and Commission on Revenue Allocation and was not able to agree to the proposed figure 238 billion as proposed by CRA and supported by the Council of Governors.

5. At the last meeting of the technical committee which took place at the Deputy President's Office there was no consensus on the recommendation of 238 billion for county governments and that KRA revenue projection stood at 11.5%; a proposal had been made that the National Treasury could use that projection to increase the equitable share of revenue for county governments.

6. On it submission on the Division of Revenue Bill, 2014, the Council of Governors appealed to the Senate for reinstatement of the

conditional grant to level 5 hospitals. The appeal was premised on the fact that these hospitals provide services to a wider catchment population that spans over a number of counties leaving the financial burden to be shouldered by the County Government where these level 5 hospitals are situated.

## 1.4 PUBLIC HEARING ON THE BILL

Pursuant to the provisions of Article 118(1) (b) of the Constitution and standing order 130(4) of the Senate Standing Orders, the Committee held a public hearing on the Bill on 9th May, 2014. The Committee received submissions from various institutions and the general public whose submissions were as follows:-

1. **Conditional allocations for Level 5 Hospitals.** The initial draft legislation from the National Treasury had eliminated this allocation. The Budget and Appropriations Committee report on the Budget Policy Statement 2014 restored it. In the Bill tabled on 26th March, 2014 by the National Assembly, money was set aside for this purpose, though it was no longer called "conditional grant." Through an amendment on the floor, the Assembly removed the set-aside allocation and returned this fund to the equitable share.

   The issue of concern is that the lack of specific provision for level 5 hospitals represents a serious threat to the operations of these institutions. A conditional grant is intended to allow for the fact that these are regional facilities servicing multiple counties, and putting the burden to support them on a single host county will result in under-funding.

   Proposed long-term solution may be to create regional boards to manage these hospitals that also collect mandatory payments from the various counties on the board. However, in the absence of such legislation or policy, and given the need to ensure continued service provision, there is no alternative to conditional grant allocations to these hospitals. The structure of that grant could be refined to ensure that counties also contribute some amount to the hospitals within the range of what would be feasible given their budgets estimates.

The purpose of conditional grants is to achieve what cannot be achieved through the equitable share. This should be restricted to issues where the formula for the equitable share would lead to undesirable results (e.g., distributing money for Level 5 hospitals to counties without such facilities) or where national government wishes to add funds to a function of county government to achieve national policy/interest (e.g.Maternal health grants).

2. **"Other National Services"** the Bill still contained the provision for "other National Services" which was unclear. This has replaced the previous version of the Bill which contained some cash set aside under national Interest called "National Strategic Interventions." Other National Services required over Ksh. 76 billion per year, but no explanation was provided for what this budget is for, or why it should be considered part of the "national interest" under Article 203 (1) (a) of the Constitution. This undermines serious debate about revenue sharing.

3. **Ambiguity on the basis of calculating the share of revenues for counties.** The Bill uses 2009/10 as the basis for calculating the share of revenues for counties. The bill states that these are the most recent audited and approved accounts. This is at odds with the Division of Revenue Act, 2013, which used 2010/2011 as the basis. Either the Division of Revenue Act, 2013 had the wrong basis, or the Division of Revenue Bill, 2014 has the wrong basis. Either way, this issue needs to be clarified.

Moreover, the use of the 2009/10 audited accounts as the basis contradicts CRA, National Treasury and even the National Assembly Budget Committee's earlier recommendations for FY 2014/2015, all of which used 2011/2012 as the basis. The constantly shifting base for calculating revenue shares undermines transparency and makes it difficult to assess trends over time.

4. **Priority setting vis-à-vis functional analysis and costing of functions.** The Division of Revenue Bill, 2014 still failed to engage with the central issue in revenue sharing; priority setting. The basis for revenue sharing across the two levels of government is not only the cost of functions, as derived from current and historical spending, but the desired expenditure on different priorities. The baseline for determining the share of revenues going to national and county governments is still the cost of all functions that national government managed in 2012/13. In 2012/13, nearly 60 percent of the budget went to education, infrastructure and security, while less than 20% percent went to health and agriculture. Are those still the right priorities today?

To supplement this review of priorities, better information is needed on the current costs of government to perform its various functions, and a better understanding of which functions of governments are to be performed by what level. Parliament has complained severally about the lack of costing information, but has not called the heads of line ministries to task for these failures. Going forward, it is recommended that the accounting officers of all ministries be summoned to explain the status of the functional assignment and costing process. The Senate should clarify the costs of running county governments. The current version of the Bill provides no information about the actual costs of running county government.

There was need to unbundle the functions of the national and county government and cost the functions as this will guide how the resources are allocated to each level of government in future.

5. The Senate should ensure that the approach to conditional grants in the Division of Revenue is comprehensive and guided by policy frameworks. All grants touching on county functions should be considered together.

There was no justification for specifically targeting some state corporations and leaving aside other. The Senate should comprehensively review the position of all state corporations providing services that now fall under county functions such as water service boards, roads boards and various agricultural authorities and state corporations.

6. The Bill discussed the Equalization Fund but there was still no policy guideline on how this fund is to be shared and utilized. The Senate should formulate regulations governing the utilization of the Equalization Fund for the marginalized counties.

7. The Bill exceeds its mandate because the Division of Revenue Bill should be used to determine the share of resources going to the two levels of government. The only relevant issues to be discussed in this Bill are the share for funds going through the Equitable Share, and any other conditional or unconditional allocations to counties. However, the Bill seeks to impose allocations on national government by introducing a set-aside fund for the Economic Stimulus Programme to be distributed to constituencies.

8. At the public hearing the Committee requested for feedback from the public on the proposed 226 billion proposed by the Bill and there was no objections raised on the proposed amount.

## CHAPTER 2: COMMITTEE OBSERVATIONS

This Chapter presents the observations by the Committee arising from its consideration of the Division of Revenue Bill, 2014, the stakeholder meetings and the Public Hearing.

### 1. Provision of funds for level 5 hospitals

The Division of Revenue Bill, 2014 does not provide for conditional allocations for level 5 hospitals. This represents a serious threat to the operations of these institutions.

These institutions are regional facilities servicing multiple counties, and as such placing the burden to support them on a single host county budget may result in under-funding which would lead to a breakdown of services to the country.

In order for the continued service delivery to these institutions whose operations are large and complex, there was no alternative, at the present time, to conditional allocations to these hospitals. Failure to provide for conditional allocations for these hospitals would put undue pressure on the host county government to fund the full operations of such institution with very limited resources.

It is noteworthy that in consideration of the Bill, the CRA, the Council of Governors and the general public emphasized on the need to ensure that level 5 hospitals were provided with adequate funding for efficient service delivery.

### 2. Functional analysis and costing of functions.

The base for the determination of the share of national revenue between the two levels of government was contested at various meetings which were held with a view to arriving at the national and county government allocations.

In the absence of proper costing of functions at both national and county government, revenue growth, among other factors was used as a basis for revenue allocation. The criterion used in arriving at the base figure of 190 billion for FY 2014/2015 was not clear. The Treasury argued that this was the base used in the last FY's budget and therefore it was the most current and therefore reflected the most recent changes in the economy and national policy. Further, the National Treasury had recommended that growth of revenues be based on the projected rate of 6% instead of 11.5 % growth in tax revenues posted by KRA as recommended by the CRA. This proved difficult in arriving at the basis for the sharing of revenue between the two levels of government.

There was need to unbundle the functions of the national and county government and undertake a cost analysis of the functions as this will guide how the resources are allocated to each level of government in future. The results of such an exercise would assist in arriving at a conclusive baseline for future Division of Revenue Bills.

All relevant stakeholders should support the Transition Authority (TA) undertake costing analysis at both levels of government with a view to arriving at conclusive figures on the actual cost of running the two levels of government and its recommendations tabled in Parliament for adoption.

### 3. Fiscal Responsibility

The CRA criterion on fiscal responsibility principal of allocating funds to the counties may need to be considered in future in order to hasten budget implementation in counties. Counties had 45% of the disbursed funds in bank accounts as at 20th March, 2014.

## CHAPTER 3: CONCLUSION

It is imperative that both levels of government are provided with adequate resources in order to perform their respective functions in accordance with the Constitution. County governments are in the process of establishing their structures and systems of governance and administration and the Committee takes note of the myriad of challenges that they are operating under during this transition period. On the other hand, the national government has programmes and projects to implement in accordance with its functions as per the Constitution and with this in mind, informed negotiations based on the aforementioned needs must be undertaken. However, the underling factor in these negotiations is the equitable share of scarce resources.

The Committee and by extension, the Senate looks forward to continued collaboration between the two Houses of Parliament, the National Treasury, CRA, TA, relevant ministries and government agencies and other stakeholders to ensure that county governments continually improve budget execution at the county level and to ensure that the devolved governance system is implemented as contemplated in Chapter 12 and as provided in Article 91 of the Constitution.

## CHAPTER 4: RECOMMENDATIONS

Arising from the submissions from various stakeholders and deliberations by the Committee, the following recommendations are made.

### 4. Provision of Funds for Level 5 Hospitals:-

The Committee recommends that the national government allocation includes adequate financing for level 5 hospitals as currently listed, in accordance with Article 187 (2) and 203(1)(d) of the Constitution.

### 5. Unbundling and Costing of Functions at both Levels of Government:-

In accordance with Section 7 (2) (a) and (b) of the Transition to Devolved Government Act, 2012, the Committee recommends that the Transition Authority fast-tracks the process of unbundling and costing of functions so as to enable the determination of resource requirements for each of the functions.

The Committee further recommends that this exercise be completed by 31st December, 2014 in order to inform the Division of Revenue Bill, 2015.

### 6. Amendments to the Bill

The Committee recommends that the Senate adopts the following amendments to the Bill:-

**CLAUSE 4**

**THAT** Clause 4 of the Bill be amended-

(c) by renumbering the existing provision as Clause 4(1);

(d) by inserting the following new sub-clause immediately after the renumbered provision;

> (2) In accordance with the provisions of Article 187(2) and Article 203(1)(d) of the Constitution, and for further certainty, the allocation for the national government under sub clause (1)

includes adequate financing for all Level 5 Hospitals as currently listed.

**SCHEDULE**

**THAT** the Bill be amended by deleting the Schedule and substituting therefor the following new Schedule -

**SCHEDULE**

**ALLOCATION OF REVENUE RAISED NATIONALLY BETWEEN THE NATIONAL AND COUNTY GOVERNMENTS FOR FINANCIAL YEAR 2014/15**

| Type / Level of allocation | Amount in Kshs. billions |
|---|---|
| **Total Shareable Revenue** | **1,026.31** |
| **C. National Allocation** | **799.65** |
| *of which;* | |
| Economic Stimulus Package [1] | **1.45** |
| Equalization fund | **3.4** |
| **D. County Allocation** [2] | **226.66** |

**Note**

*[1] For completion of centers of excellence under the Economic Stimulus Package in all 290 constituencies (5 million per constituency)*

*[2] Based on 2009/10 audited revenues approved by the National Assembly, the County Allocation of Kshs. 226.66 billion represents 43% of the audited national revenues of Kshs. 529.3 billion.*

**APPENDIXES**

- Minutes of the Committee sittings on the consideration of the Division of Revenue Bill, 2014.
- Submissions to the Committee on the Bill by various stakeholders.

**MINUTES OF THE FIRST SITTING OF THE STANDING COMMITEE ON FINANCE, COMMERCE AND BUDGET ON THE DIVISION OF REVENUE BILL, 2014 HELD AT THE GROUND FLOOR BOARD ROOM, COUNTY HALL, HARAMBEE AVENUE, PARLIAMENT BUILDINGS, NAIROBI ON THURSDAY, 24TH APRIL, 2014 AT 10.30 A.M.**

**PRESENT:**

1. Sen. Billow Kerrow, MP -**Chairperson**
2. Sen. Peter Ole Mositet, MP -Vice Chairperson
3. Sen. Moses Wetang'ula, MP -Member
4. Sen. Katherine Nabwala, MP -Member
5. Sen. Beatrice Elachi, MP -Member
6. Sen. Dr. Boni Khalwale, MP -Member

**ABSENT WITH APOLOGY**

1. Sen. Mutahi Kagwe, MP -Member
2. Sen. James Mungai, MP -Member
3. Sen. Mutula Kilonzo Junior, MP -Member
4. Sen. (Prof.) Anyang' Nyong'o, MP -Member
5. Sen. Zipporah Kittony, MP -Member
6. Sen. Paul Njoroge Ben, MP -Member
7. Sen. Dr. Wilfred Machage, MP -Member
8. Sen. Prof. John Lonyangapuo, MP -Member

**THE SENATE:**

1. Mr. Johnson Okello -Deputy Director, Legal Services
2. Mr. Peter Adika -Principal Research Officer
3. Mr. Gichohi Mwaniki -Senior Fiscal Analyst
4. Ms. Emmy Chepkwony -Senior Clerk Assistant
5. Mr. Daniel Chania -Senior Clerk Assistant
6. Ms. Rehema Chebet -Parliamentary Audio/Hansard

**MIN. NO. 117/2014/SEN/FCB: PRELIMINARIES**

The Chairperson welcomed the Members present and the opening prayer was said thereafter.

**MIN. NO. 118/2014/SEN/FCB: ADOPTION OF THE AGENDA**

The agenda presented was adopted after being proposed by Senator Catherine Nabwala and Seconded by Senator Boni Khalwale.

**MIN. NO. 119/2014/SEN/FCB: PRESENTATION ON THE DIVISION OF REVENUE BILL.**

The Committee noted that a Division of Revenue Bill, 2014 had been introduced in the National Assembly and that on 17th April, 2014, a Division of Revenue Bill had also been introduced in the Senate.

Upon invitation by the Chairperson, the Senior Fiscal Analyst presented an analysis of the Division of Revenue Bill, 2014 between what was submitted in the National Assembly and the Senate. The highlights of his presentation were as follows:-

That:-

1. Article 218 of the Constitution stipulates that two months before the end of each Financial Year a Division of Revenue Bill (DORB) shall be introduced in Parliament. The DORB divide revenue raised by the national government among the national and count levels of government.

    a. The Division of Revenue Bill is supposed to be introduced in the Parliament not later than 10th March as per Standing Orders 233.

b. This year's memorandum and Bill was different from the initial legislative proposal submitted by the Treasury on 15th February, 2014 together with the BPS

c. A separate Bill was introduced in the Senate on 17th April, 2014

d. The National Assembly concluded discussion and approved the DORB on 23rd April, 2014.

e. The message from the National Assembly to the Senate will then be sent to the Senate for its concurrence.

f. The Senate Bill had gone through first reading

2. Total revenue projected to be raised in financial year 2014/15 is Ksh.1,026.31 billion out of which Ksh 799.45 billion will be allocated to the National Government while county government will be allocated Ksh 226.66 billion which is 43% of the most recent audited revenues approved by the National Assembly.

3. The allocation to National Government includes Kshs 1.45 billion for completion of centers of excellence under Economic Stimulus Package and Kshs 3.4 billion for Equalization Fund. The allocation to County government include Kshs 3.65 billion for rural electrification, Kshs 3.74 billion for level 5 hospitals and Kshs 1.4 billion for youth polytechnics.

4. The projected revenue is an increase of 11.5% of the amount allocated in 2013/14. The allocation to the national government has also increased though at a lower rate of 9.4%, while the allocation to counties has increased by 19.3%.

5. The figures in the allocation Schedule for the bill increases the allocation to County Government from Ksh 217.87 billion to Ksh 226.66 billion from what was adopted by the National Assembly in the Budget and Appropriation Committee Report. The Committee report proposed to have Ksh 808.44 billion allocated to National Government and Ksh 217.87 billion allocated to County

Government from the forecasted ordinary revenue of Ksh 1,026.31. Whereas the Bill proposes to allocate Ksh 799.65 billion to National Government and Ksh 226.66 to County Governments of the forecasted revenue of Ksh 1,02.31 billion.

6. The National Assembly considered the Bill and made amendment by deleting the words "of which, Equitable Share, Rural Electrification, Level 5 hospitals, Youth Polytechnics" appearing in the first column of the Schedule and by deleting the figures "217.87, 3.65, 3.74 and 1.4" appearing in the second column.
7. Whereas the National Assembly Standing Orders requires introduction of DORB not later than 10th March every year, the Bill will be introduced in the Assembly in the month of April. The consideration of the Bill by both houses should therefore be hastened to inform next financial year budgets of the county governments and for the medium term.
8. Parliament may wish to consider allocating funds for earmarked projects such as for level 5 hospitals as conditional grants in the County Allocation of Revenue Bill.
9. CRA criterion on Fiscal responsibility principal of allocating funds to the counties may need to be considered in future in order to hasten budget implementation in counties. Counties had 45% of the disbursed funds in bank accounts as at 20th March, 2014.

**Deliberations ensued**

The Committee noted that the Division of Revenue Bill, 2014 as passed by the National Assembly and the Division of Revenue Bill, 2014 introduced in the Senate had a total share between the national and county governments at Kshs. 799.45 billion and 226 billion respectively and that Kshs. 226 billion in both Bills now constituted the total equitable share among county governments.

**The Committee resolved to proceed as follows:-**

1. **The Committee prioritizes consideration of the Message from the National Assembly on the Division of Revenue Bill, 2014 before proceeding with the Bill that was tabled in the Senate and that a meeting be held on 30th April 2014 to deliberate on the same ahead pending the formal presentation of the Message to the Senate.**
2. **Should the National Assembly fail to present the Message to the Senate, the Committee to proceed with the consideration of the Bill as tabled in the Senate on 17th April, 2014.**
3. **Further consideration of the Bills be postponed until 30th April, 2014 in order to ensure that a majority of the Members of the Committee are present for the consideration of any amendments to the Bills.**

**MIN. NO. 120/2014/SEN/FCB: PAYMENT OF JUDGEMENT DEBTS (ANGLO LEASING CASE).**

The Committee noted that the National Government was in the process of initiating payments for judgment debts (Anglo Leasing cases) for various projects which were found to be irregular by the Public Accounts Committee during the 9th Parliament.

**Deliberations ensued.**

**The Committee resolved to that the Cabinet Secretary, Ministry of Finance and the Attorney General be invited to a meeting of the Committee to shed more light on the matter.**

**MIN. NO. 121/2014/SEN/FCE: ADJOURNMENT**

Having dispensed with the business for the day, the Committee adjourned its sitting at one O'clock in the afternoon.

**Signature:** ..............................

**The Hon. Sen. Billow Kerrow, MP.**

**Chairperson.**

**Date:** 13th May 2014

**MINUTES OF THE SECOND SITTING OF THE STANDING COMMITEE ON FINANCE, COMMERCE AND BUDGET ON THE DIVISION OF REVENUE BILL, 2014 HELD AT THE GROUND FLOOR BOARD ROOM, COUNTY HALL, HARAMBEE AVENUE, PARLIAMENT BUILDINGS, NAIROBI ON WEDNESDAY, 30TH APRIL, 2014 AT 10.30 A.M.**

**PRESENT:**

1. Sen. Prof. John Lonyangapuo, MP -Ag. Chairperson
2. Sen. Moses Wetang'ula, MP -Member
3. Sen. Katherine Nabwala, MP -Member
4. Sen. Beatrice Elachi, MP -Member
5. Sen. Dr. Boni Khalwale, MP -Member

**ABSENT WITH APOLOGY**

1. Sen. Billow Kerrow, MP -**Chairperson**
2. Sen. Peter Ole Mositet, MP -Vice Chairperson
3. Sen. Mutahi Kagwe, MP -Member
4. Sen. James Mungai, MP -Member
5. Sen. Mutula Kilonzo Junior, MP -Member
6. Sen. (Prof.) Anyang' Nyong'o, MP -Member
7. Sen. Zipporah Kittony, MP -Member
8. Sen. Paul Njoroge Ben, MP -Member
9. Sen. Dr. Wilfred Machage, MP -Member

**THE SENATE:**

1. Mr. Dennis Abisai -Principal Legal Counsel
2. Mr. Peter Adika -Principal Research Officer
3. Mr. Kefa Omoti -Principal Research Officer
4. Mr. Daniel Chania -Senior Clerk Assistant
5. Ms. Rehema Chebet -Parliamentary Audio/Hansard

**MIN. NO. 122/2014/SEN/FCB: PRELIMINARIES**

The Chairperson welcomed the Members present and the opening prayer was said thereafter.

**MIN. NO. 123/2014/SEN/FCB: ADOPTION OF THE AGENDA**

The agenda presented was adopted after being proposed by Senator Catherine Nabwala and Seconded by Senator Beatrice Elach.

**MIN. NO. 124/2014/SEN/FCB: CONSIDERATION OF THE DIVISION OF REVENUE BILL, 2014.**

The Committee was informed that on 25th April, 2014, the National Assembly delivered the Message on the Division of Revenue Bill to the Clerk of the Senate and that the Speaker of the Senate had directed that the Message be circulated. The Committee was informed that the Message would be reported to the Senate at its next sitting.

The Committee noted that it had deferred further consideration of the Bill in order to ensure that a majority of the Members of the Committee are present for deliberations of any amendments to the Bill and resolved that **the Committee adjourns and reconvenes at 2.30 p.m. in order to allow a majority of the Members to participate.**

**MIN. NO. 125/2014/SEN/FCE: ADJOURNMENT**

Having dispensed with the business for the day, the Committee adjourned its sitting at eleven O'clock until 2.30 p.m. on 30th April, 2014.

**Signature:** ..............................

**The Hon. Sen. Billow Kerrow, MP.**

**Chairperson.**

**Date:** 13th May 2014

# MINUTES OF THE THIRD MEETING OF THE STANDING COMMITEE ON FINANCE, COMMERCE AND BUDGET ON THE DIVISION OF REVENUE BILL, 2014 HELD AT THE GROUND FLOOR BOARD ROOM, COUNTY HALL, HARAMBEE AVENUE, PARLIAMENT BUILDINGS, NAIROBI ON WEDNESDAY, 30TH APRIL, 2014 AT 2.30 P.M.

**PRESENT:**

| | |
|---|---|
| 1. Sen. Prof. John Lonyangapuo, MP | -Ag. Chairperson |
| 2. Sen. Moses Wetang'ula, MP | -Member |
| 3. Sen. Katherine Nabwala, MP | -Member |
| 4. Sen. Beatrice Elachi, MP | -Member |
| 5. Sen. Dr. Boni Khalwale, MP | -Member |
| 6. Sen. Mutula Kilonzo Junior, MP | -Member |
| 7. Sen. Zipporah Kittony, MP | -Member |

**ABSENT WITH APOLOGY**

| | |
|---|---|
| 1. Sen. Billow Kerrow, MP | **-Chairperson** |
| 2. Sen. Peter Ole Mositet, MP | -Vice Chairperson |
| 3. Sen. Mutahi Kagwe, MP | -Member |
| 4. Sen. James Mungai, MP | -Member |
| 5. Sen. (Prof.) Anyang' Nyong'o, MP | -Member |
| 6. Sen. Paul Njoroge Ben, MP | -Member |
| 7. Sen. Dr. Wilfred Machage, MP | -Member |

**THE SENATE:**

| | |
|---|---|
| 1. Mr. Dennis Abisai | -Principal Legal Counsel |
| 2. Mr. Peter Adika | -Principal Research Officer |
| 3. Mr. Kefa Omoti | -Principal Research Officer |
| 4. Mr. Daniel Chania | -Senior Clerk Assistant |
| 5. Ms. Rehema Chebet | -Parliamentary Audio/Hansard |

## MIN. NO. 126/2014/SEN/FCB: PRELIMINARIES

The Chairperson welcomed the Members present and the opening prayer was said thereafter.

## MIN. NO. 127/2014/SEN/FCB: ADOPTION OF THE AGENDA

The agenda presented was adopted after being proposed by Senator Mutula Kilonzo Junior and Seconded by Senator Zipporah Kittony.

## MIN. NO. 128/2014/SEN/FCB: CONSIDERATION OF THE DIVISION OF REVENUE BILL, 2014.

The Committee was informed that on 25th April, 2014, the National Assembly delivered the Message on the Division of Revenue Bill to the Clerk of the Senate and that the Speaker of the Senate had directed that the Message be circulated. The Committee was informed that the Message would be reported to the Senate at its next sitting.

The Committee noted that:-

1. Total revenue projected to be raised in financial year 2014/15 is Ksh.1,026.31 billion out of which Ksh 799.45 billion will be allocated to the National Government while county government will be allocated Ksh 226.66 billion which is 43% of the most recent audited revenues approved by the National Assembly.
2. The allocation to National Government includes Kshs 1.45 billion for completion of centers of excellence under Economic Stimulus Package and Kshs 3.4 billion for the Equalization Fund. The allocation for county governments had no conditional allocations but that Khs. 226.66 billion would be the total equitable share among the county governments.

The Committee was concerned that as per the Explanatory Memorandum to the Bill the allocation to County government include Kshs 3.65 billion for rural electrification, Kshs 3.74 billion for level 5 hospitals and Kshs 1.4 billion for youth polytechnics.

The Committee was informed that the Explanatory Memorandum to the Bill does not form part of the Act upon assent.

**Deliberations ensued.**

The Committee noted that at a previous meeting of the Inter-Governmental Budget and Economic Council (IBEC), it had been agreed that a figure of Kshs. 238 billion be the allocation to county governments in order to ensure that they are able to perform their functions effectively and expressed concern that Kshs. 226.66 billion would not adequately provide an opportunity for county governments to perform their functions.

It was reported that Kshs. 226.66 billion was arrived at during a consultative meeting between the Office of the President, the National Treasury, the Leaders of Majority from both Houses of Parliament and the Chairperson of the Budget and Appropriations Committee of the National Assembly and the Chairperson of the Committee in April, 2014 with a view to arriving at a consensus on the allocations for the national and county governments in view of the economic situation in the country.

Article 217 of the Constitution mandates the Commission on Revenue Allocation to make recommendations concerning the basis for the equitable sharing of revenue raised by the national government between the national and county governments and among the county governments and that to this end, the recommendations of the Commission need to be considered.

**The Committee proposed the following amendment to the Bill;**

**That, the schedule to the Bill be amended in column 1 of the National Allocation from Kshs. 799.65 billion to 788.31 billion; and in column 1 of the County Allocation from Kshs. 226.66 billion to Kshs. 238 billion and in the first column under County Allocation by inserting the words "Equitable Share of Kshs. 229.21 billion" and "Conditional Allocations for rural electrification, level 5 hospitals and youth polytechnics of Kshs. 8.79 billion".**

**MIN. NO. 129/2014/SEN/FCE:** **ADJOURNMENT**

Having dispensed with the business for the day, the Committee adjourned its sitting at half past four O'clock in the evening.

**Signature:** ................................

**The Hon. Sen. Billow Kerrow, MP.**

**Chairperson.**

**Date:** 13th May 2014

**MINUTES OF THE FOURTH MEETING OF THE STANDING COMMITEE ON FINANCE, COMMERCE AND BUDGET ON THE DIVISION OF REVENUE BILL, 2014 HELD AT THE GROUND FLOOR BOARD ROOM, COUNTY HALL, HARAMBEE AVENUE, PARLIAMENT BUILDINGS, NAIROBI ON WEDNESDAY, 7TH MAY, 2014 AT 10.30 A.M.**

**PRESENT:**

1. Sen. Billow Kerrow, MP -**Chairperson**
2. Sen. Moses Wetang'ula, MP -Member
3. Sen. (Dr.) Wilfred Machage, MP -Member
4. Sen. Katherine Nabwala, MP -Member
5. Sen. Beatrice Elachi, MP -Member
6. Sen. Dr. Boni Khalwale, MP -Member
7. Sen. Zipporah Kittony, MP -Member
8. Sen. Paul Njoroge Ben, MP -Member

**ABSENT WITH APOLOGY**

1. Sen. Peter Ole Mositet, MP -Vice Chairperson
2. Sen. Prof. John Lonyangapuo, MP -Ag. Chairperson
3. Sen. Mutula Kilonzo Junior, MP -Member
4. Sen. Mutahi Kagwe, MP -Member
5. Sen. James Mungai, MP -Member
6. Sen. (Prof.) Anyang' Nyong'o, MP -Member

**THE SENATE:**

1. Mr. Kefa Omoti -Principal Research Officer
2. Mr. Gichohi Mwaniki -Senior Fiscal Analyst
3. Mr. Daniel Chania -Senior Clerk Assistant
4. Ms. Brenda Ogembo -Clerk Assistant I
5. Mr. Joseph Kariuki -Clerk Assistant III
6. Ms. Rehema Chebet -Parliamentary Audio/Hansard

**MIN. NO. 130/2014/SEN/FCB: PRELIMINARIES**

The Chairperson welcomed the Members present and the opening prayer was said thereafter.

**MIN. NO. 131/2014/SEN/FCB: ADOPTION OF THE AGENDA**

The agenda presented was adopted after being proposed by Senator Boni Khalwale, and Seconded by Senator Moses Wetang'ula.

**MIN. NO. 132/2014/SEN/FCB: MEETING WITH THE CABINET SECRETARY, NATIONAL TREASURY AND THE ATTORNEY GENERAL.**

The Committee was informed that it had resolved that, at its sitting held on 24th April, 2014, the Cabinet Secretary, National Treasury and the Attorney General, be invited to its meeting to deliberate on the matter of Foreign Court Judgment against the Government of Kenya on Postal Corporation of Kenya projects.

The Committee was informed that the Cabinet Secretary, National Treasury was indisposed and had requested that the meeting be rescheduled and that the Attorney General was out of the country on official business in Botswana.

**After deliberations, the Committee resolved that the meeting with the Cabinet Secretary, National Treasury and the Attorney General be rescheduled to Wednesday, 14th May, 2014.**

**The Committee further recommended that the National Treasury should not make any payments on the projects until Parliament gives the go ahead to do so.**

**MIN. NO. 133/2014/SEN/FCB: CONSIDERATION OF THE DIVISION OF REVENUE BILL, 2014.**

The Committee noted that on 6th May, 2014, the Senate received a Message from the National Assembly on the Division of Revenue Bill, 2014 (National Assembly Bill No. 15 of 2014) and that the Bill had been read a First Time. The Committee noted that it had been given up to Tuesday, 13th May, 2014 to consider the Bill and report to the Senate.

The Committee thereafter deliberated and approved a schedule of the consideration of the Bill as prepared by the secretariat highlighting timelines for the Bill.

The Committee revisited its resolution made on 30th April, 2014 on the Bill and a majority of Members supported the resolution to amend the Division of Revenue Bill, 2014 from 226 billion to 238 billion.

**MIN. NO. 134/2014/SEN/FCE: ADJOURNMENT**

Having dispensed with the business for the day, the Committee adjourned its sitting at half past four O'clock in the evening.

**Signature: ..............................**

**The Hon. Sen. Billow Kerrow, MP.**

**Chairperson.**

**Date:** 13th May 2014 ..................................

# MINUTES OF THE FIFTH MEETING OF THE STANDING COMMITEE ON FINANCE, COMMERCE AND BUDGET ON THE DIVISION OF REVENUE BILL, 2014 HELD AT THE GROUND FLOOR BOARD ROOM, COUNTY HALL, HARAMBEE AVENUE, PARLIAMENT BUILDINGS, NAIROBI ON THURSDAY, 8TH MAY, 2014 AT 12.00 NOON.

**PRESENT:**

| | | |
|---|---|---|
| 1. | Sen. Billow Kerrow, MP | **-Chairperson** |
| 2. | Sen. Elachi Beatrice, MP | - Member |
| 3. | Sen. Moses Wetang'ula, MP | -Member |
| 4. | Sen. Dr. Boni Khalwale, MP | -Member |
| 5. | Sen. Zipporah Kittony, MP | -Member |
| 6. | Sen. Mutahi Kagwe, MP | -Member |
| 7. | Sen. (Prof.) Anyang' Nyong'o, MP | -Member |
| 8. | Sen. Dr. Wilfred Machage, MP | -Member |
| 9. | Sen. Katherine Nabwala, MP | -Member |
| 10. | Sen. Paul Njoroge Ben, MP | -Member |

**ABSENT WITH APOLOGY**

| | | |
|---|---|---|
| 1. | Sen. Peter Ole Mositet, MP | -Vice Chairperson |
| 2. | Sen. Prof. John Lonyangapuo, MP | - Member |
| 3. | Sen. James Mungai, MP | -Member |
| 4. | Sen. Mutula Kilonzo Junior, MP | -Member |

**IN ATTENDANCE**

**The Senate Staff:**

| | | |
|---|---|---|
| 1. | Mrs. Phylis Makau | - Director Budget |
| 2. | Ms. Emmy Chepkwony | - Senior Clerk Assistant |
| 3. | Mr. Daniel Chania | - Senior Clerk Assistant |
| 4. | Mr. Gichohi Mwaniki | - Fiscal Analyst, Parliamentary Budget Office |
| 5. | Mr. Kefa Omoti | - Parliamentary Research Office |
| 6. | Ms. Brenda Ogembo | - Clerk Assistant I |
| 7. | Mr. Joseph Kariuki | - Clerk Assistant III |
| 8. | Ms. Carol Namunyak | - Clerk Assistant III |
| 9. | Ms. Rehema Chebet | - Parliamentary Audio/Hansard |

**National Treasury**

| | | |
|---|---|---|
| 1. | Dr. Kamau Thugge | –Principal Secretary |
| 2. | Mr. Albert Mwenda | –Advisor |
| 3. | Geoffrey Malombe | –Assistant Accountant |

**MIN. NO. 135/2014/SEN/FCB: PRELIMINARIES**

The meeting commenced at 10.20am. The Chairperson welcomed the Members present and the opening prayer was said thereafter.

**MIN. NO. 136/2014/SEN/FCB: ADOPTION OF THE AGENDA**

The agenda presented was adopted after being proposed by Sen. Paul Njoroge Ben and Seconded by Sen. Boni Khalwale.

**MIN. NO. 137/2014/SEN/FCB: MEETING WITH THE NATIONAL TREASURY ON THE DIVISION OF REVENUE BILL, 2014**

The National Treasury had been invited by the Committee to give submissions on the Division of Revenue Bill, 2014. The Permanent Secretary (PS) was in attendance with his team as the Cabinet Secretary had sent his apologies.

**Submissions from the National Treasury**

- The figure of 226 billion was a compromise that was arrived at following several negotiations that had taken place and significant compromises made by all involved Stakeholders. The PS further advised the Committee that if the figure of 226 billion if revised upwards would necessitate significant borrowing from the local market. The Committee was strongly advised to accept the proposed figure of 226 billion as it had been the result of very hard fought negations.

- The Committee stated that the figure of 226 billion was based on the 2009/10 audited accounts and as such allowed room for further discussions as 2010/11 and 2012/13 accounts had not been factored in.
- In his response the PS informed the Committee that the bill considers the provision that revenue allocation to the counties should be at least 15% of nationally raised revenue calculated on basis of latest audited accounts in line with Article 203. The last audited revenues approved by the National Assembly are those of 2009/2010. Based on these Revenue figures, the allocation to counties is 43%.

**1. Borrowing and Wastage**

The Committee disagreed with the Treasury position stating that the Commission of Revenue Allocation (CRA) had jurisdiction to determine the amount of money to be allocated to counties while Treasury had the mandate to borrow. It was argued that if Treasury was willing to borrow the 36 billion as stated by the PS to facilitate the figure of 226 billion then it should equally be willing to borrow an amount of 48 billion to bring the shareable revenue to a figure of 238 billion. The Committee expressed disappointment on a lot of wastage by National Government which if streamlined would save a lot of money that could be used to bridge the amount of 226 billion to 238 billion.

**Response**

- On the issue of borrowing, the Committee was informed that if Treasury was unable to obtain the loan of 36B then it would need to borrow over 200 billion shillings locally to finance the budget deficit. This would be dangerous based on the current debt stock which stood at 52% of GDP. Treasury was projecting to borrow 190 billion if they were able to access the international financial market. Revenues had been pushed to the limit and the projection that revenues would grow by 17% next year is very ambitious target.
- On wastage the PS informed the Committee that a team headed by Cabinet Secretary for Mining Hon. Najib Balala was constituted by national government to try and find ways to address wastage cut costs. The team made budget cuts in the areas of travel allowance and recommended freezing purchase of vehicles. He emphasized that national government committed to curb wastage in government.

**2. Conditional grants**

The Committee expressed concern on the removal of conditional grants for Level 5 hospitals and the decision to share the money for the facilities among all the 47 counties by including it in the shareable revenue despite the fact that not all counties had a Level 5 hospital facility. The concern was that County Governments with level 5 hospitals will not be able to meet the cost of the hospital operations.

**3. Costing of functions**

The Committee noted that costing of functions was yet to be undertaken it was very difficult to estimate if the money allocated to counties was sufficient. He stressed that the admission by Treasury in the Bill that costing was yet to be done was not acceptable and that the costing of functions should be urgently undertaken by the Transitional Authority while unbundling of functions exercise needed to be undertaken urgently by the Ministry of Devolution and Planning and the National Treasury.

**Response**

On costing of functions, Treasury had done some work in the previous year. They had approached CRA and the TA to partner with them in this exercise and all ministries and did a line by line analysis of the budget to allocate functions and budget lines. The costing process revealed that there was need to provide separately for Level 5 hospitals and this was done and an amount of 10 billion was earmarked for the same purpose. The Governors however were not in favour of this decision and resultantly the amount was cut to 3.4 billion shillings. This amount was later moved to become shareable revenue on the request of Governors to allow counties fund their own hospitals from this amount as well as any other collected revenue. The discussion to hold counties with Level 5 hospitals harmless had been held but Treasury but lost the debate and the amount was allocated as sharable revenue.

**Response from Treasury:**

The legislative proposal by treasury to the National Assembly on the Division of Revenue, 2014 has since been converted by the National Assembly into a Bill that was sent to the Senate inform of a message. The National Treasury has little to do in terms of changing the Bill as it were except implement the final law.

4. **Duplication of functions and clarifications on what constitutes other national functions**

- The need to get rid of duplicated functions between National and County Governments in sectors such as administration, agriculture and water to save money was proposed.
- The Committee sought clarification on the 76 billion shillings allocated to other national services. He requested the PS to clarify exactly war constituted national services and also sought clarity on the

**Response**

The Committee was informed that Treasury had written to the Transition Authority requesting them to gazette functions so as to facilitate the budgeting process by ensuring assignment of resources to all unbundled functions. He informed the Members that this was not done however and has led to some of the challenges of duplication of functions. He also highlighted that some of the duplication in functions was the result of shared functions where responsibility of activities was with both national and county governments. On the issue of national interest projects, the committee was informed that these were projects with national implications and as such were national interest projects and the details of these would appear in the national estimates.

**Concluding remarks**

- The Committee stated that it was seriously contemplating revising the amount from 226 billion to provide money for level 5 hospitals. It observed that it was unwise to allocate money for Level 5 hospitals as shareable revenue as even with an increase to 238 billion to the counties it was still unlikely that Level 5 hospitals would be allocated sufficient resources required running the facilities. The Committee further pointed out the importance of Treasury respecting the decisions and advice of constitutionally obligated bodies like CRA.

**MIN. NO. 138/2014/SEN/FCE: ADJOURNMENT**

There being no other business and the time being thirty minutes past twelve O'clock the Chairman adjourned the meeting.

**SIGNED: ..........................................................................................**

**The Hon. Sen. Billow Kerrow, MP. -Chairman**

**DATE: ...**13th May 2014**...**

**MINUTES OF THE SIXTH MEETING OF THE STANDING COMMITEE ON FINANCE, COMMERCE AND BUDGET ON THE DIVISION OF REVENUE BILL, 2014 HELD AT THE GROUND FLOOR BOARD ROOM, COUNTY HALL, HARAMBEE AVENUE, PARLIAMENT BUILDINGS, NAIROBI ON THURSDAY, 8TH MAY, 2014 AT 1.00 P.M.**

**PRESENT:**

1. Sen. Billow Kerrow, MP -Chairperson
2. Sen. Elachi Beatrice, MP - Member
3. Sen. Moses Wetang'ula, MP -Member
4. Sen. Dr. Boni Khalwale, MP -Member
5. Sen. Zipporah Kittony, MP -Member
6. Sen. Mutahi Kagwe, MP -Member
7. Sen. (Prof.) Anyang' Nyong'o, MP -Member
8. Sen. Dr. Wilfred Machage, MP -Member
9. Sen. Katherine Nabwala, MP -Member
10. Sen. Paul Njoroge Ben, MP -Member

**ABSENT WITH APOLOGY**

1. Sen. Peter Ole Mositet, MP -Vice Chairperson
2. Sen. Prof. John Lonyangapuo, MP - Member
3. Sen. James Mungai, MP -Member
4. Sen. Mutula Kilonzo Junior, MP -Member

**IN ATTENDANCE**

**The Senate Staff:**

1. Ms. Emmy Chepkwony - Senior Clerk Assistant
2. Mr. Daniel Chania - Senior Clerk Assistant
3. Mr. Gichohi Mwaniki - Fiscal Analyst, Parliamentary Budget Office
4. Mr. Kefa Omoti - Parliamentary Research Office
5. Ms. Brenda Ogembo - Clerk Assistant I
6. Mr. Joseph Kariuki - Clerk Assistant III
7. Ms. Carol Namunyak - Clerk Assistant III
8. Ms. Rehema Chebet - Parliamentary Audio/Hansard

**Commission on Revenue Allocation**

1. Mr. Micah Cheserem – Chairman CRA
2. Ms. Fatuma Abdulkadir – Vice Chairman CRA
3. Ms. Lineth Oyugi- Director

4. Mr. George Ooko -CEO CRA

**MIN. NO. 139/2014/SEN/FCB: PRELIMINARIES**

The meeting commenced at 12.30pm. The Chairperson welcomed the Members present and the opening prayer was said thereafter.

**MIN. NO. 140/2014/SEN/FCB: ADOPTION OF THE AGENDA**

The agenda presented was adopted after being proposed by Sen. Paul Njoroge Ben and Seconded by Sen. Boni Khalwale.

**MIN. NO. 141/2014/SEN/FCB: MEETING WITH THE COMMISSION ON REVENUE ALLOCATION ON THE DIVISION OF REVENUE BILL, 2014**

Submissions from CRA on the recommendations on sharing of revenue rose nationally between the national and county governments for the financial year 2014/2015.

CRA recommendations factored in a historical costing approach which provides for analysis of ministry budgets FY 2012/13 to 2014/2015 cost of devolved functions plus a percentage for administration cost which provided for 230,893 million. Remuneration and administrative cost for county assembly and county executive of 48,269 million was added. Total cost of devolved functions totaled to 279,162 million.

CRA presented a summary of IBEC Budget Committee negotiated recommendations on Vertical Share for Financial year 2014/2015 in Ksh. Millions which factored in the following:

1. Equitable Share 2013/14- 190,000
2. Less cost of remunerations & Administration of new county structures – 13,622
3. Cost of Devolved functions for FY 2013/14- 176,378
4. Add cost of administration for Devolved Functions (15% of Remuneration)- 7,083
5. Adjust for revenue growth at 11.5% - 20,283
6. Add Pension for Devolved Staff (15% of 60% Remuneration)- 4,250
7. Add Cost of New County Structures – 30,233

Total of 238,227

The Committee noted the following that the summary of National Treasury recommendation on Vertical Share for financial year 2014/15 in Ksh. Millions differ from the CRA recommendations because of the following:

i National Treasury factored in adjustment for annual growth in expenditure by 6% while CRA factored in Adjustment of annual growth in expenditure by 11.5%. The Committee observed that this was not a requirement of any law and it only further served to complicate the process of sharing revenue.

ii TA to perform its function of determining the resource requirements for each of the functions. There is need for information on the current costs of government to perform its various functions, and a better understanding of which functions of governments are to be performed by each level. Lack of costing on the function has undermined the process of Division of Revenue.

**MIN. NO. 142/2014/SEN/FCE: ADJOURNMENT**

There being no other business and the time being forty five minutes past twelve O'clock the Chairman adjourned the meeting.

**SIGNED:** ..........................................................................................

**The Hon. Sen. Billow Kerrow, MP. -Chairman**

**DATE:** 13th May 2014

**MINUTES OF THE SEVENTH SITTING OF THE STANDING COMMITEE ON FINANCE, COMMERCE AND BUDGET ON THE DIVISION OF REVENUE BILL, 2014 HELD AT THE 1ST FLOOR CHAMBER, COUNTY HALL, HARAMBEE AVENUE, PARLIAMENT BUILDINGS, NAIROBI ON FRIDAY, 9TH MAY, 2014 AT 9.00 A.M.**

**PRESENT:**

1. Sen. Billow Kerrow, MP -**Chairperson**
2. Sen. Beatrice Elachi, MP -Member
3. Sen. Zipporah Kittony, MP -Member
4. Sen. Mutahi Kagwe, MP -Member
5. Sen. (Prof.) Anyang' Nyong'o, MP -Member

**ABSENT WITH APOLOGY**

1. Sen. Peter Ole Mositet, MP -Vice Chairperson
2. Sen. James Mungai, MP -Member
3. Sen. Paul N. Wamatangi, MP -Member
4. Sen. Dr. Wilfred Machage, MP -Member
5. Sen. Prof. John Lonyangapuo, MP -Member
6. Sen. Moses Wetang'ula, MP -Member
7. Sen. Katherine Nabwala, MP -Member
8. Sen. Dr. Boni Khalwale, MP -Member
9. Sen. Mutula Kilonzo Junior, MP -Member

**THE SENATE:**

1. Ms. Emmy Chepkwony -Senior Clerk Assistant
2. Ms. Brenda Ogembo -First Clerk Assistant
3. Ms. Rehema Chebet -Parliamentary Audio Office

**MIN. NO. 143/2014/SEN/FCB: PRELIMINARIES**

The Chairperson welcomed the Members present and the opening prayer was said thereafter.

The Chairman welcomed the members of the Committee present and all the members of the public to the public hearings on the Division of Revenue Bill, 2014. He informed the meeting that the Senate organized Public hearings on the Division of Revenue bill, 2014 in line with the constitution under Article 118(1)(b) which provides that Parliament shall "facilitate public participation and involvement in the legislative and other business of Parliament and its committees". Standing Order 130(4) provides that a committee to which a bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the committee makes its report to the Senate.

The objectives of the Public hearings were, *inter alia:*

i to adhere to the Constitution article 118(1) (b) and Senate Standing Order 130(4);
ii to hear the view of the Kenyans on the Division of Revenue Bill, 2014;
iii to give an opportunity for all Kenyans to participate and submit proposals on the Bill, 2014; and
iv to institutionalize participation as an integral part in Senate Legislative process as per the provisions of the Standing Order 130.

The chairman offered apologies on behalf of the Committee for short notice offered by the Senate to the public to participate on the legislative process on the Division of Revenue Bill, 2014 and hoped that in future the public will be given sufficient time to make both oral and writing submissions on all legislations before the Senate. He retaliated the Senate's commitment to engaging the public in its legislative processes.

**MIN. NO. 144/2014/SEN/FCB: PUBLIC HEARING ON THE CONSIDERATION OF THE DIVISION OF REVENUE BILL, 2014.**

The Senate organized Public hearings on the Division of Revenue bill, 2014 in line with the constitution under Article 118(1)(b) the Senate Standing Order 130(4).

The following are key concerns and recommendations by the member of the public on the Division of Revenue Bill, 2014.

**Key concerns and recommendations**

1. Conditional grants for Level 5 Hospitals should be restored. The initial draft legislation from Treasury eliminated this grant. The parliamentary report on the Budget Policy Statement 2014 restored it. In the Bill tabled on 26th march, 2014 by the National Assembly, money was set aside for this purpose, though it was no longer called "conditional Grant." In an amendment from the floor, the Assembly appears to have removed the set-aside and returned these funds to the equitable share.

The concern is there this represent a serious threat to the viability of these institutions. A conditional grant is intended to allow for the fact that these are

regional facilities servicing multiple counties, and putting the burden to support them on a single host county may result in under-funding.
Proposed long-term solution may be to create regional boarders to manage these hospitals that also collect mandatory payments from the various counties on the board. However, in the absence of such legislation or policy, and given the need to ensure continued service provision now, there is no alternative to conditional grant.

The structure of that grant could be refined to ensure that counties also contribute something to the hospitals within the range of what would be visible given their budgets.

The purpose of conditional allocations is to achieve what cannot be achieved through the Equitable Share. This should be restricted to issues where the formula for the Equitable Share would lead to undesirable results (e.g., distributing money for L% hospitals to counties without such facilities) or where national government wishes to add funds to a function of county government to achieve national policy (e.g., Maternal health grants).

2. Other National Services. This version of Bill still contains the provision for "other National Services" which is unclear. This has replaced the previous version of the Bill which contained a set aside under national Interest called "National Strategic Interventions." Other National Services requires over Ksh. 76 billion per year, but no explanation is provided for what this line is, or why it should be considered part of the national interest as per the constitution. This undermines serious debate about revenue sharing.

3. Ambiguity on the basis of calculating the share of revenues for counties. The Bill uses 2009/10 as the basis for calculating the share of revenues for counties. The bill states that these are the most recent audited and approved accounts. This is at odds with the Division of Revenue Act, 2013, which used 2010/2011 as the basis. Either the DORA 2013 had the wrong basis, or the DORB 2014 has the wrong basis. Either way, this issue needs to be clarified. Moreover, the use of the 2009/10 audited accounts as the basis contradicts CRA, Treasury and even the National Assembly Budget Committee's own prior recommendations for 2014, all of which used 2011/2012 as the basis. The constantly shifting bases for calculating revenue shares undermines transparency and makes it difficult to assess trends over time.

4. The bill compares the equitable share in 2013 with the total allocation in 2014(Equitable share plus set asides for hospitals, etc). This is inappropriate and

creates misleading impression that the county share has increased more than it actually has.

5. The Division of Revenue Bill, 2014 still fails to engage with the central issue in revenue sharing: priority setting. The basis for revenue sharing across the two levels of government is not only the cost of functions, as derived from current and historical spending, but the desired expenditure on different priorities. The baseline for determining the share of revenues going to national and county governments is still the cost of all functions that national government managed in 2012/13. In 2012/13, nearly 60 percent of the budget went to education, infrastructure and security, while less than 20% percent went to health and agriculture. Are those still the right priorities today?
6. To supplement this review of priorities, of course, better information is needed on the current costs of government to perform its various functions, and a better understanding of which functions of governments are to be performed by each level. Parliament has complained severally about the lack of costing information, but has not called the heads of line ministries to task for these failures. Going forward, it is recommended that the accounting officers of all ministries be summoned to explain the status of the functional assignment and costing process.
7. The Senate should clarify the costs of running county governments. The current version of the Bill provides no information about the actual costs of running county government.
8. The Senate should ensure that the approach to conditional grants in the Division of Revenue is comprehensive and guided by policy frameworks. All grants touching on county functions should be considered together.
9. There is no justification for specifically targeting REA and leaving aside other state corporations. The Senate should compressively review the position of all state corporations providing services that now fall under county functions such as water service boards, road boards and various agricultural related state corporations.
10. The Bill continues to discuss the equalization Fund but there are still no policy guidelines on how this fund is to be shared and utilized. The Senate should push for equalization fund through legislation in Parliament.
11. The Bill exceeds its mandate because the Division of Revenue Bill should be used to determine the share of resources going to the two levels of government. In our view, the only relevant issues to be discussed in this Bill are the share for funds going through the Equitable Share, and any other conditional or unconditional allocations to counties. Yet this Bill seeks to impose allocations on national government by introducing a set-aside for Economic Stimulus Package funds to be distributed to constituencies.

12. The rural electrification projects (REA) there is need to unbundle the functions of the national and county government and cost the functions this will guide how the resources are allocated to each level of government.

**MIN. NO. 145/2014/SEN/FCE: ADJOURNMENT**

There being no other business and the time being forty five minutes past twelve O'clock the Chairman adjourned the meeting.

**SIGNED:** ..........................................................................................

**The Hon. Sen. Billow Kerrow, MP. -Chairman**

**DATE:** 13th May 2014

# MINUTES OF THE EIGHTH MEETING OF THE STANDING COMMITEE ON FINANCE, COMMERCE AND BUDGET ON THE DIVISION OF REVENUE BILL, 2014 HELD AT THE GROUND FLOOR BOARD ROOM, COUNTY HALL, HARAMBEE AVENUE, PARLIAMENT BUILDINGS, NAIROBI ON MONDAY, 12TH MAY, 2014 AT 2.30 P.M.

**PRESENT:**

1. Sen. Billow Kerrow, MP -Chairperson
2. Sen. Peter Ole Mositet, MP -Vice Chairperson
3. Sen. Elachi Beatrice, MP -Member
4. Sen. Prof. John Lonyangapuo, MP -Member
5. Sen. Dr. Boni Khalwale, MP -Member
6. Sen. Mutahi Kagwe, MP -Member
7. Sen. Dr. Wilfred Machage, MP -Member
8. Sen. Katherine Nabwala, MP -Member
9. Sen. Paul Njoroge Ben, MP -Member

**ABSENT WITH APOLOGY**

1. Sen. Moses Wetang'ula, MP -Member
2. Sen. Zipporah Kittony, MP -Member
3. Sen. (Prof.) Anyang' Nyong'o, MP -Member
4. Sen. James Mungai, MP -Member
5. Sen. Mutula Kilonzo Junior, MP -Member

**IN ATTENDANCE**

**The Senate Staff:**

1. Ms. Emmy Chepkwony - Senior Clerk Assistant
2. Mr. Daniel Chania - Senior Clerk Assistant
3. Mr. Kefa Omoti - Parliamentary Research Office
4. Ms. Brenda Ogembo - Clerk Assistant I
5. Ms. Rehema Chebet - Parliamentary Audio/Hansard

**MIN. NO. 143/2014/SEN/FCB: PRELIMINARIES**

The meeting commenced at 2.30pm. The Chairperson welcomed the Members present and the opening prayer was said thereafter.

**MIN. NO. 144/2014/SEN/FCB: ADOPTION OF THE AGENDA**

The agenda presented was adopted after being proposed by Sen. Katherine Mukiite and seconded by Sen. Peter Ole Mositet.

**MIN. NO. 145/2014/SEN/FCB: CONFIRMATION OF MITUES OF THE PREVIOIUS SITTINGS**

Minutes of the following sittings were read and confirmed as a true record of the deliberations and signed by the Chairperson.

1. Minutes of the First sitting held on 24th April, 2014 were proposed by Sen. Elachi and seconded by Sen. Peter Mositet.
2. Minutes of the Second sitting held on 30th April, 2014 10.30 a.m. were proposed by Sen. Katherine Mukiite and Seconded by Sen. Beatrice Elachi.
3. Minutes of the Third sitting held on 30th April, 2014 at 2.30 p.m. were proposed by Sen. Beatrice Elachi, and seconded by Sen. Katherine Mukiite.
4. Minute of the Fourth sitting held on 7th May, 2014 were proposed by Sen (Dr.) Wilfred Machage and seconded by Sen. Paul Njoroge Ben.
5. Minutes of the Fifth sitting held on Thursday, 5th May, 2014 at 12.00 noon were proposed by Sen. Mutahi Kagwe and seconded by Dr. Wilfred Machage.
6. Minutes of the Sixth sitting held on Thursday, 5th May, 2014 at 1.00 p.m. were proposed by Sen. Dr. Wilfred Machage and seconded by Sen. Mutahi Kagwe.
7. Minutes of the Seventh sitting held on Firiday, 9th May, 2014 were proposed by Sen. Beatrice Elachi, and seconded by Sen. Mutahi Kagwe.

**MIN. NO. 146/2014/SEN/FCB: CONSIDERATION AND ADOPTION OF THE COMMITTEE REPORT ON THE DIVISION OF REVENUE BILL, 2014.**

The Committee considered its report on the Division of Revenue Bill, 2014 and adopted with the following recommendations and amendments.

**1. Provision of Funds for Level 5 Hospitals:-**

The Committee recommends that the national government allocation includes adequate financing for level 5 hospitals as currently listed, in accordance with Article 187 (2) and 203(1)(d) of the Constitution.

**2. Unbundling and Costing of Functions at both Levels of Government:-**

In accordance with Section 7 (2) (a) and (b) of the Transition to Devolved Government Act, 2012, the Committee recommends that the Transition Authority fast-tracks the process of unbundling and costing of functions so as to enable the determination of resource requirements for each of the functions.

The Committee further recommends that this exercise be completed by 31st December, 2014 in order to inform the Division of Revenue Bill, 2015.

### 3. Recommendations and amendments to the Bill

The Committee recommends that the Senate adopts the following amendments to the Bill:

## CLAUSE 4

**THAT** Clause 4 of the Bill be amended-

(a) by renumbering the existing provision as Clause 4(1);

(b) by inserting the following new sub-clause immediately after the renumbered provision;

> (2) In accordance with the provisions of Article 187(2) and Article 203(1)(d) of the Constitution, and for further certainty, the allocation for the national government under sub clause (1) includes adequate financing for all Level 5 Hospitals as currently listed.

**SCHEDULE**

SCHEDULE

**THAT** the Bill be amended by deleting the Schedule and replacing therefor the new Schedule below -

**ALLOCATION OF REVENUE RAISED NATIONALLY BETWEEN THE NATIONAL AND COUNTY GOVERNMENT FOR FINANCIAL YEAR 2014/15**

| **Type / level of allocation** | **Amount in Kshs. Billions** |
|---|---|
| Total Shareable Revenue | **1,026.31** |
| **A. National Allocation** | **799.65** |
| Of which; | |
| Economic Stimulus Package [2] | 1.45 |
| Equalization fund | 3.4 |
| **B. County Allocation** | **226.66[1]** |

Note

*[1] Based on 2009/10 audited revenues approved by the National Assembly, the County Allocation of Kshs. 226.66 billion represents 43% of the audited national revenues of Kshs. 529.3 billion.*

*[2] For completion of centers of excellence under the Economic Stilulus Package in all 290 constituencies (5 million per constituency)*

**MIN. NO. 147/2014/SEN/FCE: ADJOURNMENT**

There being no other business and the time being forty five minutes past five O'clock the Chairman, adjourned the meeting.

**SIGNED:** ..........................................................................................

**The Hon. Sen. Billow Kerrow, MP. -Chairman**

**DATE:** ......13 th May 2014......

The Institute for Social Accountability

***The Chair,***

***The Senate Standing Committee on Finance, Commerce and Budget,***

***P.O Box 41842 - 00100, Nairobi – Kenya,***

***Parliament Buildings***

*May 8th 2014,*

***Ref: Memorandum to the Senate on the Division of Revenue Bill, 2014***

**1.0 Why the Division of revenue?**

Because Article 202 of the Constitution provides that ***revenue raised nationally shall be shared equitably among the national and county governments.*** Article 190 provides that ***Parliament shall by legislation ensure that county governments have adequate support to enable them perform their functions.*** These functions are provided in schedule four of the constitution and include delivery of health, agriculture, water, county infrastructure and so forth.

The Division of Revenue process is the means by which revenue is shared between the national and county government. It is informed by recommendations of the Commission on Revenue Allocation [Article 218(c)], the National Treasury, Senate and decision of the National Assembly. Members of the public are required to input as provided under Articles 118 and 201(a).

The Division of Revenue bill proposes the amount to be shared between the national and county governments in the financial year **2014/2015 is KSHS. 682.1 billion.**

**2.0 What is the county governments' share and why?**

Revenue collected by the national government under Article 209 of the Constitution is to be shared between the national and county governments, either:

- Equitably using the criteria/formula approved by Parliament; and
- As additional conditional or unconditional allocations

County governments execute their functions using resources transferred for the National government, mobilized locally and directly received from donors. In the financial year 2014/15, KSHS. 242.3 billion is proposed to fund the gap between resources that county governments are able to generate through their own revenue raising capabilities and resources required to carry out the assigned responsibilities as spelled out in the fourth schedule of the constitution. Out of the 242.3 billion costed for devolved functions, Kshs.

221.1 billion will be transferred as an equitable share block (Unconditional Allocations) and Kshs. 21.2 billion (8.7 %) in conditional allocations.

This amount is still lower than the Commission on Revenue Allocation determination that the total cost of running all 47 counties in 2014/15 is KSHS. 279.1 billion, 40 percent share of the total sharable revenue.

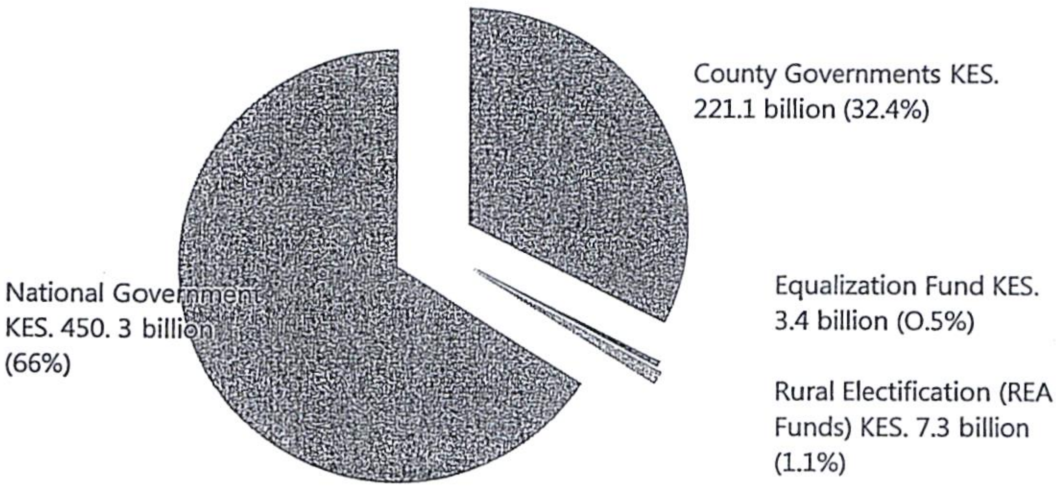
**The Equitable share**

The Division of Revenue Bill Allocation of Kshs.221.1 billion (32.4 per cent) is in line with Article 203 (2) of the constitution that provides that for every financial year, county governments shall receive a minimum of 15 per cent in the equitable share. However;

1. **The KSHS. 221.2 billion** Counties will receive is still based on two year backdated audited accounts (FY 2011/12) The Constitution prescribes that the Auditor General shall audit and report within six months after the end of each financial year [1]. Using the most recent accounts (FY 2012/13) **KES 776.9 billion** would be the amount available for the national and county governments to share, and given that national resources are scarce and finite, **meaning 94.7 billion more** would be available to the counties and the national government this year
2. It is proposed that counties equitable share be based on the adjusted Division of Revenue Act 2013. **Why?** There is still no official data on counties fiscal capacity and efficiency hence allocations for devolved functions are based on historical data[2]. This goes against the DORA 2013 that prescribes that **the establishment of county governments will facilitated the compilation and availability of official data that will inform the future division of revenue between the national and county governments[3].** This too is the case for the CRA who in the analysis for determining the vertical share elected to use historical allocations.

[1] COK Article 229 (4) where 'within six months after the end of each financial year, The auditor general shall audit and report, in respect to that financial year....'
[2] DORA pg. 14-15

**Sharing revenue raised nationally between the National amd County Governments for FY 2014/2015**




## Additional Conditional allocations

Article 202 (2) provides that county governments may be given additional funding from the national government share.

### a. The rural electrification projects (REA)

County governments will receive **7.3 billion** from the national government for the purposes of the Rural Electrification projects (REA) in the county governments. This is a function that has been assigned to county governments but planning and budgeting of these funds will be the responsibility of the national government. **Why?** The transfer of it to county governments in a manner contemplated under the Transition to devolved government Act is pending. **Why?** There is still a lack of coordination between the national and county governments where among other things assigning responsibility is lacking. This lack of comprehensive assignment of functions goes back to the Transitional Authority mandate of unbundling these functions.

### b. Loans and Grants from development partners

County governments have also been allocated conditional allocations of KSHS.13.9 billion. **Why?** Apart from the equitable share, these additional resources are to facilitate proper functioning of county governments and to ensure on-going services are provided for. **However just like the REA, these funds too will not be transferred to the county governments. Why?** Because they are subject to contractual agreements which stipulate where the funds should be spent and cannot, therefore, be divided to other areas of use.

**In which counties will these funds be used and for what?** Donor assistance in Kenya has taken the form of general budget support where a lump sum is given to ministries' without neither the Division of Revenue bill nor the County Allocation of Revenue bill give the public, counties or parliament county by county information on the projects

**3.0 What about regional referral hospitals?**

Allocations to regional referral hospitals were also included from the county governments' equitable share. Healthcare is now a fully devolved function meaning expenses relating to county healthcare including remuneration of county health staff, administration costs for running county health facilities including regional referral hospitals lies with the county government. The capacity of counties to effectively implement fiscal decentralization has been severely overrated as is seen in the management of county public finance as county governments complete their first budget process. Coupled with insufficient locally generated revenue and inadequate planning skills and capacity of leaders, the responsibilities and operations of this devolved county function may still have to heavily rely on national government.

**.4.0 What about administration and remuneration?**

Of the Kshs. 221.1 billion available to county governments, 18 percent (41.5 billion) is allocated to administration and remuneration costs. **Why?** Following the transfer of some devolved functions to county governments KSHS. 7.1 billion is proposed to be transferred from the national government to cover costs of administration. Furthermore, KSHS. 4.2 billion towards pension of staff transferred from national government and KSHS. 30.2 billion to cover cost of remuneration and administration of the new county structures. However, Given that there is still no official data on counties fiscal capacity and efficiency to implement, remuneration and administration costs without the true and complete devolution of functions, will lead to a similar situation as counties struggling to implement their first budgets characterised by low uptake of funds with revenue remaining unspent (KSHS. 27.1 billion in the first quarter of FY 2013/14[4]).

**5.0 What about the national government?**

Under the fourth schedule of the Constitution the national government is exclusively responsible for national functions. Revenue allocation for these functions is estimated at KSHS. 478.8 billion. **Why?** Education is highest priority receiving a proposed allocation of KSHS. 162.3 billion followed by National Strategic Interventions, KSHS. 108.2 billion and Defence and NIS KSHS. 80.07 billion. **What are National Strategic Interventions and why is it second in Kenya's national interest?** It is unclear what this budget line is for as there is

[4] COB county budget implementation review report November 2013

no explanation on this from the National Treasury and although shows funding last year[5], this budget line was not provided for last year's Division of Revenue Act 2013

**6.0 What has changed from last year's Division of Revenue Bill, 2013?**

| Items | DORA 2013 | DORA 2014 | COMMENTS |
|---|---|---|---|
| County Allocation | KSHS. 210 billion | KSHS. 242.3 billion | This is a 16.3% increase. However, it is still lower than the CRA recommendation of KSHS. 279 billion i.e. 37 billion difference. The 37 billion variations in figures go back to the lack of costing of functions that is still pending. |
| Rural Electrification Allocation | This was not provided for | KSHS. 7.3 billion from the national governments share of revenue | The thrust of making funds available at the local level is the conviction that the local communities are best placed to prioritise on projects and equally that local resources are easily tapped where people participate in development processes. However, given the gaps in policy and legislation, it has been difficult to hold anyone fully accountable for such funds hence although this is a function under the county governments, funds will still be managed by the national government. Kenya's current grant system seems to not have clearly defined norms and standards that would facilitate the efficient monitoring of how far counties are delivering on national priorities norms such as the REA. |
| Cost of county government remuneration and administration | KSHS. 13.6 billion | KSHS. 30. 2 billion | This is a 122 percent increase in addition to pension payments of 4.2 billion for staff transferred from national government and 7 billion in administration costs transferred from the nation government. However, it is still lower than the CRA recommendation of KSHS. 40 billion i.e. 10 billion difference. The 10 billion variation figure goes back to the lack of costing of functions that is still pending. In addition, administration and remuneration have been provided for without lack of a comprehensive functional assignment and still no official data on counties fiscal capacity and efficiency to implement. |

[5] DORA 2014 pg. 13

| | | | |
|---|---|---|---|
| Loans and Grants-donor support | KSHS. 16.6 billion | KSHS. 13.9 billion | This is project aid which is earmarked by donors to finance specific sectoral programs. Where development finance is delivered as project aid, it has been channelled directly to local government or indirectly to local communities, by passing the county government. 65 percent (13.9 billion) of conditional allocations to county governments is in the form of donor assistance which have not been broken down into county by county projects nor have the timelines been indicated **Will this further fragment county development structures and worsen the problem of intergovernmental coordination and monitoring of county development activities?** |
| Regional referral hospitals | Was given as a condition grant of KSHS. 3.4 billion to counties | Not provided for conditionally | Now that Health is a fully devolved function it sits that counties will bear the cost of these facilities. In The capacity of counties to effectively implement fiscal decentralization has been severely overrated as is seen in the management of county public finance as county governments complete their first budget process. Coupled with insufficient locally generated revenue and inadequate planning skills and capacity of leaders, the responsibilities and operations of this now fully devolved county function may still have to heavily rely on national government. |
| National Interest | KSHS. 478 billion | KSHS. 472.8 billion including<br>-the presidency KSHS. 4.3 billion and National Strategic Interventions that were not included last year | There is no explanation as to why these items have been included in the DORA 2014 and neither has the National Strategic Interventions been explained given it is receiving the second highest allocation of KSHS. 108.2 billion |
| Public debt and other obligations | KSHS. 381.5 billion | KSHS. 414.4 billion | The country's public debt has increased by 8 percent. There is need for budget constraints from both levels of government in order to release more |

| | | | |
|---|---|---|---|
| | | | funds to allow for fiscal decentralisation in a manner that both counties and the national government are well funded to execute their assigned functions |
| Fiscal capacity and efficiency of county governments | Potential revenues that the local taxes and revenues assigned to the counties under Article 209. The establishment of county governments will facilitate the compilation and availability of official data on county fiscal capacity of revenue collection will inform the future division of revenue. | Potential revenues generated from the tax base assigned to counties in article 209 not accessed | County governments are still unable to match the potential revenues that can be generated from their assigned tax base[6]. Without measuring counties fiscal capacity[7], it is unfair to match what county governments should get against the assumption that they are able to effectively collect own revenues |

## 7.0 Observations

### 1. Costing of functions

Article 187 [(2) (a)] provides that if a function or power is transferred *arrangements shall be put in place to ensure that the resources necessary for the performance of the function are transferred.* This was pre-emptied in The Division of Revenue Act 2013 that explained the establishment of county governments should facilitate the compilation and availability of official data which can be used to inform future division of revenue between the national and county governments[8]. This is not the case for the Division of Revenue Act 2014. The lack of

[6] locally collected revenue during the first quarter of financial year 2013/14 was only to 6.5 per cent of the estimated annual local revenue targets of the counties 9COB First quarter county implementation report)
[7] DORA, 2014 pg. 14
[8] DORA 2013, pg. 10-11

costing has resulted in the use of historical data , estimates and adjusted figures from last year's DORA that do not give a clear indication on whether adequate resources have been to county governments to ensure that on-going services assigned to those governments in the fourth schedule will not be disrupted. In addition, the bill pronounces that in the determination of the vertical allocations, costing was done. This is a misrepresentation as allocations for devolved functions were based on historical costs.

### 2. Conditional grants

Under Article 202(2) counties may receive additional grants or transfers based on sector needs, specific national or county needs or one-off needs. An effective transfer system is critical for poverty alleviation, minimising inequalities, economic growth of the counties and overall national development. The transfers are supposed to enable the county government to play a central role in countering these challenges.

When these transfers originate from consultations between the two levels they have the potential to spur change, but if not they can be a source of fiscal instability, may undermine the autonomy of counties to make budget decisions and may lead to additional or unfunded operational costs.

Kenya's current grant system seems to not have clearly defined norms and standards that would facilitate the efficient monitoring of these funds. For example The Public Finance Management Act 24 (11) provides for regulations to guide the establishment, winding up and application of all public funds earmarked for specific purposes. This is yet to be done.

### 3. Dispute resolution

There is a strong imperative to fulfil the promise of the constitution of 'fostering national unity by recognising diversity' (Article 174). Devolution can present a risk to national cohesion, and these risks need to be managed. Whereas the bill refers to dispute resolution mechanisms under the Intergovernmental Relations Act these have not been set up. Regulations under section 38(c) have not been actualised therefore mechanisms of good will to resolve dispute or mechanisms to formally declare a dispute are yet to be put in place.

### 4. Rationalisation of national government functions

The Division of revenue Bill proposes to transfer KSHS. 7.1 billion from the national government to county governments to cover costs of administration. However, the national government is yet to demonstrated how it has reorganised itself from a functional point of view. The absence of clarity in the assignation of responsibility greatly compromises effectiveness, transparency and consultations that are imperative for the process. Without a clear functional assignment, funding requirements at each level of government, including staff and structures will breed confusion and conflict.

5. **Capacity of members on the Division of Revenue Bill**

There is Concern over the utterances of members of parliament proposing unconstitutional suggestions in media demonstrating an alarming degree of incapacity. Members of Parliament need to have access to timely, up-to-date, accurate and well researched information to accurately speak on issues and effective decision-making. The Centre for Parliamentary Studies and Training (CPST) together with the Ministry of Finance and CRA should intensify effort to educate parliament on the constitutional and legal provisions guiding Division of Revenue in addition to other comprehensive budget information.

6. **Transparency and Accessibility by the public**

There is concern that the spirit of the Constitution of making financial information accessible and transparent to the public is not being adhered to. The proposed costs of county staff transferred from the national government, costs for the new county structures, the expected reduction in administration expenses from the national government and adjustments to cater for annual growth have not been supported by detailed workings and policy pronouncements.

In addition, Loans and Grants in the Division of Revenue Bill and the County Allocation of Revenue bill have not been supported by a county by county breakdown of projects and lifespan.

Further, there is no explanation as to what informed this policy and what are the National Strategic Interventions given it is receiving an allocation of KSHS. 108.2 billion

7. **Audited Revenues**

There is concern over the use of two-year backdated revenues. This means the Constitutional provision of Article 229 (4), which requires the auditor general to audit and report within six months has not been met.

**8.0 Recommendations**

1. All costing, workings and policy information should to be provided by the Commission on Revenue Allocation and the Transitional Authority
2. Correct the misrepresentation of costing of functions or else attach these workings
3. The Division of Revenue Bill, 2014 should provide a breakdown of the conditional grants and loans county by county, project by project and lifespan

4. Provide a budget line for support of implementation process specifically dedicated to the Functional Assignment, Human Resource and Asset processes.
5. Capacity building of parliament

**9.0 Conclusion**

It is our fear is that the Division of Revenue proceeding without costing data and the Functional Assignment data will be dictated by political interests and may be subject to political contests and possible legal challenge as was the case with the previous. More critically without costing data, county functions may be under or over financed and may undermine the implementation of devolution.

Mr. Chama, SCA
For Budget Committee
08/05/14

**From: Hon Mary Wanjiru, former Member of Parliament for Kinangop**

**To: Memorandum to The Eleventh Parliament/ The Senate**

Standing Committee on Finance, Commerce and Budget

Division of Revenue Bill, 2014

PUBLIC HEARINGS/ RECEIPT OF MEMORANDA at County Hall.

MAY 9TH 2014

The Clerk and the Entire Committee Members,

Honourable Ladies and Gentlemen,

A year has elapsed and the financial provision was made and allocated by the Parliamentary Budgetary Allocation Committee, headed Very Rev. Hon Mutava Musyimi in June 2013/2014, to former MPs, a total of Kshs10B.was approved and minutes are enclosed to confirm the same. We had in mind a number of 1,000 former M.P.s those who served from 1963 to 2007, those three categories of former M.P.s who served in Parliament from 1963 to 1984, who used to earn allowances, until 1984 when the Parliamentary Pensions Act Cap 196, came to existence. However most of the clauses in Cap 196 were assumed from the Pensions Act Cap 189, which in turn, came into existence in 1948, and it was designed by the Colonial Administrators to compensate all former Colonial Soldiers who had served the Colony in the 2nd World war. A soldier had to serve for ten consecutive years (10) in order to earn a pension. After independence, this Act with these and other clauses,wa adapted and it became the basis of awarding pension to all Civil Servants and it is still intact and is being used by The National Treasury's Pensions Department to date in order to process pension to the retired Civil Servants. (Enclosure Cap 189, 190, 192, 193, 194, 195, 196,).

I note with regret, that Year 1999, there was an amendment to Cap 196, Sec 8b(ii) No 1 of 1999, statute Amendment which awarded pension to an M.P. who had served a single term of five (5) years and it was backdated to 1994, a date when a review of Cap 196, was due i.e,. it stipulates that the Pensions Act should be reviewed after every ten years. However, another amendment was done through the Statute Amentment No 4 0f 2000, to bring back the two consecutive term clause to Cap 196, Sec 8b(ii), barely a year after its amendment of 1999, to deny former M.P.s their pension again. Here is a case in which an amendment was introduced onto another amendment barely a year having elapsed. A valid amendment would have taken place after ten (10) years. The former Chief Justice Gicheru's Parliamentary Pensions Tribunal ruled against any form of discrimination in forms of amendments to Cap 196, in the case No 1 of 2003, of Francis Bobi Tuva and 8 others verses Parliament, in the year 2005. As the Act Cap 196 stands to date another review would have taken place in 2014, But, it is noteworthy that all later amendments did not take away our rights to have Pension and Gratuity as is stipulated in the Constitution.

There was another Tribunal which was appointed by the former President which was headed by then Retiree Justice Majid Saeed Cocker, to review the terms and conditions and services of all Civil Servants, and it is in this report that a token commonly referred to as ex-gratia, of between Kshs500,000/= and Kshs1,000,000/= was recommended to former MPs who served between 1963 to 1984. I.e the 1st, 2nd 3rd and 4th Parliament. A letter was done to facilitate this by the Office of the President, by A Mrs Kihara, to pay the former members who had been left behind in the initial payments.This ex-gratia was later baptized and renamed as a winding up allowance, that was later increased to Kshs1,500,000/= and as of today it stands at Kshs3,920,000/= .

Year 2005 the National Assembly Remuneration Act No 5, was anacted mainly to take care of the Parliamentary Staff Members as well as MPs in order to legalize some of the financial transactions on their stipends, allowances and salaries and mortgages and taxation on their earnings, etc., were recommended and implemented to the letter, **except,** for the portion pertaining to former MPs, where the Tribunal recommended a pension of Kshs100,000/= to be awarded to all former MPs who served as Members of the august House since 1963.

Year 2009, The Speaker of the National Assembly appointed The Justice Akilano Akiwumi's Tribunal whose terms of reference and mandate, was to make recommendations as to the working conditions and remunerations of MPs. It is from the Tribunal's recommendations that a salary of kshs850,000/=, was recommended for a Member of Parliament, and some taxes were introduced on their allowances, eg, mortgage, mileage and commuted mileage, traveling, sitting, etc. This report (Akiwumi"s) was tabled in Parliament by the Speaker of the National Assembly Hon Kenneth Marende, on June 9th, 2010. This means, that our Pension increments and enhancements for those who are already on Pension, have been accumulating with interest of 13.5% to date, since June 2010. Even the New Constitution of October 2012 did not take away our rights to what is owed to us by the Treasury Department. I Am also requesting the Senate to make sure that funds Kshs10b., are disbursed to us by the National Treasury, without waiting for an Actuarion services by Parliament. This is a simple job for a qualified accountant to excute such a small number of FMPs.

To date there has been reluctance on the part of the Clerks department to finalize the payments of our Pensions and gratuities, which is attracting an interest of 13.5%.

It is noteworthy that all former MP's are only one thousand, and twenty nine members (1,029) up to year 2014 March i.e., 1st to 10th Parliament. Most of them are dead.

COMMISSION ON REVENUE ALLOCATION

CRA

# RECOMMENDATIONS ON SHARING OF REVENUE RAISED NATIONALLY BETWEEN THE NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2014/2015

SENATE, 8th May 2015

## CRA Recommendation: Approach

### Historical Costing Approach

1. Analysis of ministry budgets FY 2012/13 to 2014/15.
   - Cost of Devolved functions (item 098)
   - Plus a percentage for administration cost
   - **(Ksh.230,893 million)**

2. Add Remuneration and Administrative Cost for
   - County Assembly & County Executive

   **(Ksh. 48,269 million)**

**3.** Total cost of Devolved Functions = Ksh. 279, 162 million (**Details in slide 3, 4 & 5**)

# Cost of Devolved & Concurrent Functions (Kshs. Million)

| NO. | MINISTRY | TOTAL Budget | Allocation to National | % | Allocation to Counties | % |
|---|---|---|---|---|---|---|
| 1 | Health | 92,495 | 20,700 | 22% | 71,796 | 78% |
| 2 | Devolution and Planning | 99,103 | 34,771 | 35% | 64,332 | 65% |
| 3 | Agriculture Livestock & Fisheries | 32,930 | 11,730 | 36% | 21,201 | 64% |
| 4 | Lands , Housing & Urban Development | 32,918 | 15,697 | 48% | 17,221 | 52% |
| 5 | Sports,Culture & the Arts | 15,945 | 8,042 | 50% | 7,903 | 50% |
| 6 | Industrialization and Enterprise Development | 7,024 | 4,902 | 70% | 2,121 | 30% |
| 7 | Transport and Infrastructure | 138,830 | 108,487 | 78% | 30,342 | 22% |

# Cost of Devolved & Concurrent Functions (Kshs. Million)

| NO. | MINISTRY | TOTAL Budget | Allocation to National | % | Allocation to Counties | % |
|---|---|---|---|---|---|---|
| 8 | EAC Affairs, Commerce and Tourism | 7,964 | 6,285 | 79% | 1,679 | 21% |
| 9 | ICT | 8,628 | 6,883 | 80% | 1,745 | 20% |
| 10 | Labour Soc. Securities & Services. | 2,944 | 2,403 | 82% | 541 | 18% |
| 11 | Environment, Water & National Resources | 67,449 | 58,279 | 86% | 9,170 | 14% |
| 12 | Education, Science & Technology | 126,989 | 124,806 | 98% | 2,183 | 2% |
| 13 | Energy and Petroleum | 58,529 | 58,114 | 99% | 415 | 1% |
| 14 | Interior & Co-ordination | 100,967 | 100,722 | 100% | 245 | 0% |
| | **TOTAL** | **792,714** | **561,822** | **71%** | **230,893** | **29%** |

# Cost of New County Structures (2014/15)

| | Ksh Millions |
|---|---|
| Remuneratuion for New County Staff | 38,143 |
| Administrative Cost for New County Structures | 10,126 |
| Total Cost of New County structures | 48,269 |

## RECOMMENDATION FOR FINANCIAL YEAR 2014/15

| | 2014-2015 | |
|---|---|---|
| | Ksh. Million | Percentage |
| Projected Shareable Revenue | 1,074,700 | 100% |
| Allocation to county Governments | 279,162 | 26.0% |
| Equalisation Fund | 3,411 | 0.3% |
| Allocation to National Government | 792,127 | 73.7% |

# COMMISSION ON REVENUE ALLOCATION

## Summary of IBEC Budget Committee Negotiated Recommendation on Vertical Share for Financial Year 2014/15 in Ksh. Millions

| | **Budget Item** | **Ksh. Millions** |
|---|---|---|
| 1 | Equitable share 2013/14 | **190,000** |
| 2 | Less cost of remuneration & Administration of new county Structures | **13,622** |
| 3 | Cost of Devolved Function for FY 2013/14 | **176,378** |
| 4 | Add Cost of Administration for Devolved Functions (15% of Remuneration) | **7,083** |
| 6 | Adjust for revenue growth at 11.5% | **20,283** |
| 7 | Add Pension for Devolved Staff (15% of 60% of Remuneration) | **4,250** |
| 8 | Add Cost of New County Structures | **30,233** |
| 9 | **TOTAL** | **238,227** |
| | **% Allocation to County Governments** | **22.2%** |

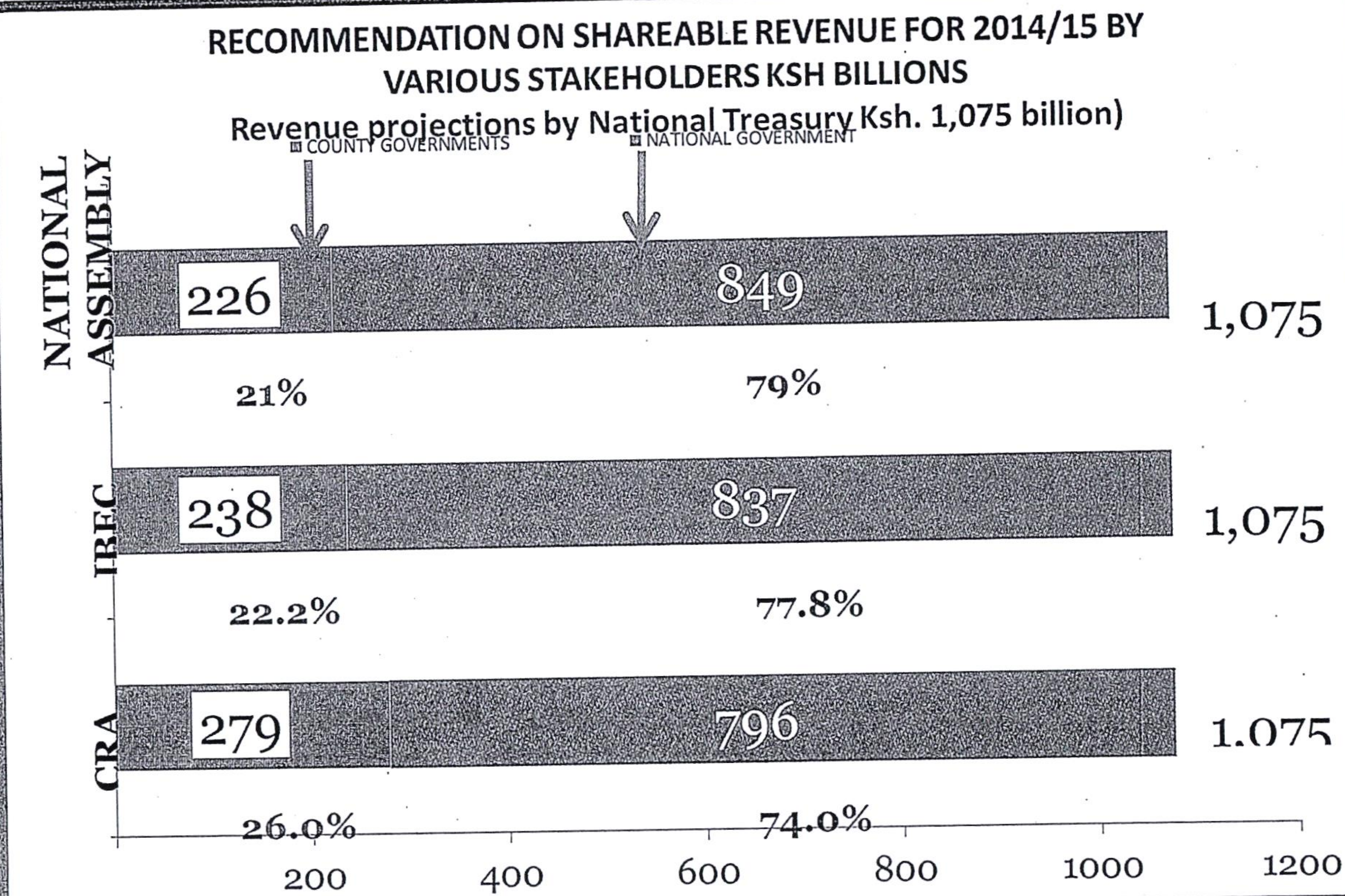
## Summary of National Treasury Recommendation on Vertical Share for Financial Year 2014/15 in Ksh. Millions

| | Budget Item | Ksh. Millions |
|---|---|---|
| 1 | Equitable share 2013/14 | 190,000 |
| 2 | Less cost of remuneration & Administration of new county Structures | 13,622 |
| 3 | Cost of Devolved Function for FY 2013/14 | 176,378 |
| 4 | Add Cost of Administration for Devolved Functions (15% of Remuneration) | 7,083 |
| 5 | Sub- Total | 183,461 |
| 6 | Adjustment for Annual growth in Expenditure by 6% | 11,008 |
| 7 | Add Pension for Devolved Staff (15% of 60% of Remuneration) | 4,250 |
| 8 | Add Cost of New County Structures | 30,233 |
| 9 | Sub Total | 228,951 |
| | Less Rural Electrification | 7,314 |
| | TOTAL | 221,637 |
| | % Allocation to County Governments | 20.6% |

# Recommendation by the National Assembly

| | | Ksh. Billions |
|---|---|---|
| 1 | Equitable share | 217.87 |
| 2 | Rural electrification | 3.65 |
| 3 | Level 5 Hospitals | 3.74 |
| 4 | Youth Polytechnics | 1.4 |
| 5 | TOTAl | 226.66 |

# COMMISSION ON REVENUE ALLOCATION



# THANK YOU

IBP | INTERNATIONAL BUDGET PARTNERSHIP
Open Budgets. Transform Lives.

08/05/2014

MEMORANDUM

# ISSUES AND RECOMMENDATIONS ON DIVISION OF REVENUE 2014

This memo summarizes our concerns and recommendations regarding the Division of Revenue Bill 2014 as approved by the National Assembly, and now before the Senate.

This memorandum will also be made available on our website at www.internationalbudget.org/kenya. For further information, please contact us at +254729937158.

The first part of the memo lists our key concerns and recommendations. The second part provides some additional background information and details.

## Part I: Key Concerns and Recommendations

1. **We believe that the conditional grant for Level 5 Hospitals should be restored.** The initial draft legislation from Treasury eliminated this grant. The parliamentary report on the Budget Policy Statement 2014 restored it. In the Bill tabled in the National Assembly on March 26, money was set aside for this purpose, though it was no longer called a "conditional grant." In an amendment from the floor, the Assembly appears to have removed the set-aside and returned these funds to the equitable share.

   Aside from the fact that no explanation has been given for why this was done, we are of the view that it represents a serious threat to the viability of these institutions. A conditional grant is intended to allow for the fact that these are regional facilities servicing multiple counties, and putting the burden to support them on a single host county may result in under-funding. There are various ways of dealing with a situation like this, and a longer-term solution may be to create regional boards to manage these hospitals that also collect mandatory payments from the various counties on the board. However, in the absence of such legislation, and given the need to ensure continued service provision now, we believe there is no alternative to a conditional grant. The structure of that grant could be refined to ensure that counties also contribute something to the hospitals within the range of what would be feasible, given their budgets.

2. **The Division of Revenue Bill 2014 has introduced considerable confusion into the revenue sharing process, undermining transparency and informed public debate. The Senate should rectify this by revising the language in the Bill entirely.** We give several examples of this problem.

    a. For reasons that are unknown, the National Assembly opted to eliminate the use of the terms "conditional" and "unconditional" allocations from the Bill. In the original Bill tabled on 26th March, they left set-asides for hospitals, rural electrification, youth polytechnics. By eliminating the use of the term "conditional grants" to describe these funds, however, the National Assembly reduced clarity about the status of these funds. If they are not conditional allocations, they should go through the Equitable Share. If they are conditional allocations, they should be referred to as such and there should be further policy guidance as to how they are to be used. Both in the Bill and in the Hansard from 22 and 23 April, 2014, it remains entirely unclear what the intention of these set-asides was or is meant to be. We are told that the conditional allocations were dropped so as to "consolidate the total allocation to counties as a block figure." Then we are told that the "initial spirit of…providing specific resources for priority services…is echoed in the Bill." This is vague and ambiguous language that obfuscates rather than enlightening.

    b. The Bill uses 2009/10 as the basis for calculating the share of revenues for counties. The Bill states that these are the most recent audited and approved accounts. This may or may not be correct, but is at odds with the Division of Revenue Act 2013, which used 2010/11 as the basis. Either the DORA 2013 had the wrong basis, or the DORB 2014 has the wrong basis. Either way, this issue needs to be clarified. Moreover, the use of the 2009/10 audited accounts as the basis contradicts CRA, Treasury and even the National Assembly Budget Committee's own prior recommendations for 2014, all of which used 2011/12 as the basis. The constantly shifting bases for calculating revenue shares undermines transparency and makes it difficult to assess trends over time.

    c. The Bill compares the Equitable Share in 2013 with the total allocation in 2014 (Equitable Share plus set asides for hospitals, etc.). This is inappropriate and creates a misleading impression that the county share has increased more than it actually has.

    d. This version of the Bill still contains a provision for "Other National Services" which is unclear. This has replaced the previous version of the Bill which contained a set aside under National Interest called "National Strategic Interventions." Other National Services requires over Ksh 76 billion per year, but no explanation is provided for what this line is, or why it should be considered part of the national interest as per the constitution. This undermines serious debate about revenue sharing.

3. **The Division of Revenue Bill 2014 still fails to engage with the central issue in revenue sharing: priority setting. The Senate should consider the core issue of priorities in revising the Bill, with a focus on the relative importance of security, education, agriculture, health and other services.** The basis for revenue sharing across the two levels of government is not only the "cost" of functions, as derived from current and historical spending, but the desired expenditure on different priorities. The baseline for

determining the share of revenues going to national and county governments is still the cost of all functions that national government managed in 2012/13. In 2012/13, nearly 60 percent of the budget went to education, infrastructure and security, while less than 20 percent went to health and agriculture. Are those still the right priorities today? (See Annexures).

To supplement this review of priorities, of course, better information is needed on the current costs of government to perform its various functions, and a better understanding of which functions of government are to be performed at each level. In our view, Parliament has complained severally about the lack of costing information, but has not called the heads of line ministries to task for these failures. Going forward, we recommend that the accounting officers of all ministries be summoned to Parliament to explain the status of the functional assignment and costing process.

4. **The Senate should clarify the costs of running county governments further before approving these figures.** The current version of the Bill provides no information about the actual costs of running county government. Instead, it attacks the CRA figures without providing an alternative basis. This reflects the general hodge-podge nature of the Bill, which has completely altered from the original draft prepared by Treasury, while retaining some of the original language and justifications. While we believe the CRA figures cannot be defended, there is no justification for throwing them out without due consideration and replacing them with other equally indefensible figures.

5. **The Senate should ensure that the approach to conditional grants in the Division of Revenue is comprehensive and guided by policy frameworks.** The discussion of set-asides or conditional grants is incomplete in the current Division of Revenue. Certain grants, such as the grant for free maternity care, are not included in the Bill, while others are discussed. There is no logical reason for this. All grants touching on county functions should be considered together. Morevoer, this year, funds for polytechnics and rural electrification are being discussed, yet there is no framework for their implementation. Aside from the fact that the Bill says nothing about how these will be distributed (leading us to conclude that they will follow the formula), it is hard to justify taking away half the budget for the Rural Electrification Authority and giving it to counties without any framework for how counties and REA are going to coordinate ongoing projects, or new projects, to avoid duplication. Arbitrary reallocations of this type do not serve the public interest and should be preceded by policy reforms. Otherwise, we may undermine a functional state corporation and encourage waste of resources at the same time.

6. **Related to the previous point, there is no justification for specifically targeting REA and leaving aside other state corporations. The Senate should comprehensively review the position of all state corporations providing services that now fall under county functions.** There are many other state corporations providing county functions, such as the Water Service Boards, road boards, and various agriculture-related state corporations. These have remained untouched. The ad hoc approach to dealing with these issues is likely to undermine services and lead to an irrational mix of state corporations that remain untouched with no justification, and others that have been gutted without properly building county systems to take up their roles. This issue should have been addressed by the Transition Authority, but now falls properly to the Senate.

7. **Still on the matter of conditional grants, the Bill continues to discuss the Equalization Fund but to our knowledge, there is still no policy guidance on how this Fund is to be shared and utilized.** Our understanding is that no county has actually received funds from the EF, and no county will, until a framework is put into place for its use. The CRA proposed a Marginalization Policy over a year ago that has never been debated, amended or approved. The Senate should push for the EF to be operationalized through legislation in Parliament.

8. **The Bill exceeds its mandate in several ways, and this should be rectified by the Senate.** The Division of Revenue Bill should be used to determine the share of resources going to the two levels of government. In our view, the only relevant issues to be discussed in this Bill are the share of funds going through the Equitable Share, and any other conditional or unconditional allocations to counties. Yet this Bill seeks to impose allocations on national government by introducing a set-aside for Economic Stimulus Package funds to be distributed to constituencies. In our view, this issue must be debated as part of the Budget Estimates, and not as part of the Division of Revenue. The same is true for the county set-asides: unless these are given as conditional grants, they are being used to allocate county funds in a way that is unconstitutional. Funds given to counties through the Equitable Share are to be budgeted for as counties see fit. It does not make sense to pull out only certain functions, such as youth polytechnics, and tell counties that they must use their funds on these, but not to mention any other functions. The purpose of conditional allocations is to achieve what cannot be achieved through the Equitable Share. This should be restricted to issues where the formula for the Equitable Share would lead to undesirable results (e.g., distributing money for L5 hospitals to counties without such facilities) or where national government wishes to add funds to a function of county government to achieve national policy goals (e.g., maternal health grants).

## Part II: Further Notes on Hospitals, Costing, Priorities, and Debt

The International Budget Partnership-Kenya wishes to raise the following issues with regard to the Division of Revenue Bill (DORB) 2014 for the attention of Parliament:

1. **The 2014 Division of Revenue Bill eliminates the conditional grant contained in the Division of Revenue Act 2013 for regional hospitals without any explanation.** In 2013, it was recognized that the transfer of provincial hospitals to counties could lead to under-financing of these facilities. The logic was that regional hospitals serve people from many counties, but by transferring them to a single county (where they are located), that county would then be bearing the cost of services for users from many counties. This can lead to under-financing. Moreover, the distribution of funds through the equitable share formula does not favor counties with regional hospitals, so they would tend to receive inadequate funding to maintain services at these facilities.

   **It was thought that these counties should therefore receive dedicated funding for regional hospitals through a conditional grant.** In addition to the 7 provincial hospitals, 4 additional "high volume" Level 5 facilities were included in the list to be subsidized. The initial proposed grant in FY 2013/14 was Ksh 10 billion, which was reduced by Parliament to Ksh 3.4 billion. It was argued that those counties that host such facilities get disproportionate advantage from them and should be forced to use some of their own funding, while this would be topped up through the conditional grant. No research has been done to assess the impact on regional hospitals of this decision, but we are aware that a number of counties, such as Nyeri, did not in fact top up the funding for the health sector in their county budgets for 2013/14.

**We urge Parliament to interrogate this issue further and ensure that adequate funds are to be made available for regional hospitals in this year's budgets.** Although the issue remains unresolved, we note with concern that there is no conditional allocation for these facilities in this year's Division of Revenue. The assumption would seem to be that host counties will bear the full cost of these facilities. Without further analysis, this seems an extremely risky decision which could negatively impact service delivery at regional/high volume hospitals.

2. **The proposed allocation for counties is based on the incomplete and opaque functional assignment process that informed the 2013 Division of Revenue Act, rather than an updated and improved assessment of what each level of government should be doing.** The basis for the allocation of revenue is still the exercise conducted by Treasury in the 2012/13 budget estimates. This is implicit in Treasury's choice to use the 2013 Division of Revenue as the "baseline" for allocations. This exercise, which led to the coding of certain functions that were then performed by national government as "devolved functions (98)," has never been fully validated. It was the responsibility of the Transition Authority to complete this exercise in a more comprehensive fashion, by fully unbundling all government services and determining, consistent with the Fourth Schedule of the Constitution, which level of government was responsible for which services.

   **The failure to update this functional assignment process means that we cannot be sure that funds have been properly divided between the two levels, and that both national and county governments have an adequate share of funding.** The use of the 2012/13 budget to assign functions is inadequate, because that budget was based on a set of inputs, rather than functions. There is not a clear alignment between the use of funds in 2012/13 and the functions assigned by the Constitution. This makes it very difficult to know if budget figures for the two levels accurately reflect what each level of government is supposed to do.

   **For example, consider the provision of HIV services in the 2012/13 budget.** The National Aids Control Programme was allocated Ksh 932 million in 2012/13. Of that, the 2012/13 budget coded Ksh 903 million as "devolved functions" for "specialized materials and supplies." Without knowing what those "specialized materials and supplies" are, we cannot know whether it was proper to devolve this amount to counties and to leave Ksh 29 million at national level or not.

   **In 2013/14, moreover, the national government allocated 288 million for National Aids Control Programme, a massive increase from the 29 million that was supposed to remain at national level.** Most of those funds (about 250 million) were again for "specialized materials and supplies." Because specialized materials and supplies is not a function of government, it is impossible to know why these funds were retained at national level. It is possible that this reflects the fact that certain medicines must continue to be procured nationally or through donor arrangements of some kind. But there is no explanatory information available. This is one example of a problem that is rampant in the budget.

**Parliament should demand more comprehensive information and a proper functional assignment to ensure that the estimation of county and national government financial needs is properly done.** There is no good reason why no further work has been done since last year to improve upon the existing functional assignment process. This represents the failure of national institutions like the Commission on Revenue Allocation, the National Treasury, the Transition Authority and the national line ministries to perform their functions adequately to inform Parliament.

3. **The continued use of the 2012/13 budget allocations as a baseline is problematic, because it assumes that Kenya's priorities do not change from year to year; yet the Division of Revenue is the time to question whether the country should shift its priorities in the coming year.** Even if the functional assignment process in 2012/13 was perfect, using it now would mean that we continue to have the same priorities as a country as we did in 2012/13. But the annual budget process is designed explicitly to allow us to debate that every year and to change our priorities over time. That discussion should happen now, when we debate the DORB, and not only later, during the debate over the full Budget Estimates.

   **In 2012/13, nearly 60 percent of the budget went to education, infrastructure and security, while less than 20 percent went to health and agriculture.** For further details of the budget, please see attachments to this memo. The key question Parliament must ask is if we want to continue to distribute the budget in these ways. If, rather, we decide to spend more on health or agriculture, then this would necessitate giving more shareable revenues to counties and less to national. On the other hand, if we believe security and infrastructure deserve more funding, the reverse would be true.

4. **In the original bill from Treasury, the total cost of administration at county level had risen from 13.6 billion last year to Ksh 30.2 billion, in addition to pension payments at 4.2 billion for staff transferred from national to county government, but there is inadequate justification for these numbers.** These numbers are no longer in the Bill, but we assume that they still form the basis for the recommendations. At a time when government is discussing the need to control the wage bill, it is important that every increase in staff/administration costs be discussed rigorously. It is therefore important to have additional information on the exact calculations behind the increase in administrative costs.

   **Parliament should demand more detailed information on the staff numbers and remuneration that are driving the increase in administrative costs at county level.** This is also important because Treasury's figures are lower than the comparable estimates from CRA, which puts the cost of staff remuneration at 38 billion, plus another 10 billion in administrative costs, for a total of 48 billion. Parliament should satisfy itself as to the reasons for the difference between Treasury's 34.4 billion for staff, pensions, and administration, and CRA's figure of 48 billion covering the same.

5. **The rising allocations for debt repayment should be debated by Parliament in order to ensure that the country has the proper balance between debt and current services.** According to the figures in this year's DORB, debt payment has risen by about 22 billion from last year, which is an increase of roughly 7 percent in the funds which national government needs to meet its obligations. This will take the total size of the budget going to debt payment to over Ksh 350 billion. This is a considerable increase since 2011/12, when it was only Ksh 210 billion. Since the share of the budget that must be set aside for debt payment and other national obligations must be catered for in the national share, this reduces the funding available for other services.

6. **Parliament should interrogate further the reasons for the basic disagreement between Treasury and CRA over the source of the baseline figures to be used for estimating the cost of all functions, leading to a difference of Ksh 40 billion.** Treasury states that CRA uses the forward estimates from the 2012/13 budget for 2014/15 as the baseline in calculating the allocation for functions. (In other words, the 2012/13 budget contains projections for 2013/14 and 2014/15. CRA has used the figures projected for 2014/15 that were contained in the 2012/13 budget.) Treasury argues that this is not appropriate, because the baseline should really be the political agreement reached in the 2013/14 budget, which deviates, as budgets usually do, from the projections the prior year.

   **For Parliament, the relevant point is to understand the source of the differences in the figures generated by Treasury and CRA for the cost of functions.** Neither has given adequate explanation for the source of their figures. For Parliament to adjudicate a difference of nearly Ksh 40 billion in estimated costs of delivering services, they must have more information about the source of the differences. Moreover, there is also a figure from the Intergovernment Budget and Economic Council (IBEC) mentioned of 238 billion total, which is in between the total figure from Treasury and total figure from CRA (279 billion) but with no explanation. It is problematic for figures to be discussed without reference to their basis in estimates of cost or other considerations.

ANNEXURES/ATTACHMENTS

**The Right Priorities?**
**The Right Priorities Revisited**
**Sharing Revenue: How Much Is Already Committed?**

# THE RIGHT PRIORITIES? UNDERSTANDING WHAT THE KENYAN GOVERNMENT SPENDS MONEY ON

BY JASON LAKIN AND JOHN KINUTHIA, INTERNATIONAL BUDGET PARTNERSHIP FEBRUARY 2014

The Division of Revenue Bill 2014 is out, and it is time for Parliament to decide how much each level of government should get. Often, the debate about how revenue should be shared becomes a debate about whether we prefer to see more resources at national or county level. But in fact, the debate should really start with a discussion of Kenya's priorities as a country. Because the constitution gives different responsibilities to each level of government, a decision about priorities will lead us to a particular division of revenue between the two levels. This decision should be based primarily on what Kenyans want from their governments and not which level of government they prefer.

To understand how Kenyan governments have allocated money in recent years, we need to go back to the last financial year before devolution really began, which was 2012/13. The 2012/13 budget still informs the annual division of revenue in Kenya because the allocation to counties is based on the allocation for county functions (such as health and agriculture) in 2012/13. Adjustments have been made for inflation and for additional staffing costs of running county governments, but the costs for service delivery are still based on the sector allocations in the 2012/13 national budget. The question Parliament should ask itself this year is: should the priorities in 2012/13 still be the priorities in 2014/15?

## Sector Allocations

Table 1 on the next page presents all the sectors in the budget by total allocation (recurrent and development) in 2012/13. We have combined ministries to derive these sectors. For example, the education sector includes the two education ministries, and the Teachers Service Commission. For a full explanation of which Ministries, Department, and Agencies (MDAs) we included in each sector, see Table 2 on page 2.

The table on the next page presents budget estimates for MDAs. It does not include Consolidated Fund Services (CFS), which is primarily dedicated to debt repayment, and which accounts for the rest of the 2012/13 budget (Ksh 346 billion).

**What should we take away from this table?**

- More than 40 percent of the budget is for education and infrastructure alone.
- Adding security to that, we have accounted for almost 60 percent of the budget.
- Key services in health, water, agriculture and housing receive less than 20 percent of the budget.

**Are these the priorities we want? It's time to debate that. What kind of questions might we ask?**

- Are we spending enough on health, agriculture, water and sanitation, and housing relative to education, infrastructure and security?
- Are we spending enough on activities that will grow the economy such as trade, industrialization, and cooperative development (captured under International Relations and Commerce) relative to other priorities?
- Are we spending enough on services relative to the cost of administration and management of public finances (State Administration)?
- How much should we continue to spend on planning and regional development at national level (including CDF), as opposed to distributing those funds to counties for their own development?

Having set our priorities, we then must ask if we have given adequate funds to the responsible level of government.

## Table 1: Where Does the Money Go? Sector Allocations in the 2012/13 Budget (Ksh billions)

| Sectors (FY (2012/13) | Recurrent | Development | Total | Share | Cumulative Share |
|---|---|---|---|---|---|
| Infrastructure + Energy | 40 | 198 | 238 | 21% | 21% |
| Education | 209 | 27 | 236 | 21% | 43% |
| Security | 158 | 8 | 166 | 15% | 58% |
| Health (Including the Global Fund under the Ministry of Finance Estimates) | 55 | 41 | 96 | 9% | 66% |
| Planning and Regional Development | 27 | 41 | 69 | 6% | 73% |
| State Administration | 40 | 23 | 63 | 6% | 78% |
| Parliament, AG, Judiciary and Constitutional Commissions | 53 | 6 | 59 | 5% | 84% |
| Water and Irrigation | 6 | 36 | 42 | 4% | 87% |
| Agriculture | 15 | 20 | 35 | 3% | 90% |
| Gender, Youth and Culture | 19 | 16 | 34 | 3% | 94% |
| Lands, Housing, and Environment | 14 | 15 | 29 | 3% | 96% |
| International Relations and Commerce | 20 | 7 | 27 | 2% | 99% |
| Government Investment and Public Enterprises inc. Economic Recovery Programme | 1 | 15 | 16 | 1% | 100% |
| Total MDAs | 656 | 453 | 1109 | 100% | |

## Table 2: How we combined ministries to form sectors in this analysis

| Sector | Ministries |
|---|---|
| Education | Ministry of Education |
| | Ministry of Higher Education, Science and Technology |
| | Teachers Service Commission |
| Infrastructure + Energy | Ministry of Roads, |
| | Ministry of Transport, |
| | Ministry of Energy |
| | Ministry of Public Works |
| | Ministry of Information and Communications |
| Security | Ministry of State for Provincial Administration and Internal Security |
| | Ministry of Defence |
| | Office of the Vice President and Ministry of Home Affairs |
| | National Security Intelligence Service |
| | National Police Service Commission |
| Health | Ministry of Medical Services (including Global Fund in Ministry of Finance) |
| | Ministry of Public Health and Sanitation |
| Water and Irrigation | Ministry of Water and Irrigation |
| Agriculture | Ministry of Agriculture |
| | Ministry of Livestock Development |
| | Ministry of Fisheries Development |
| Parliament, AG, Judiciary and Constitutional Commissions | State Law Office |
| | The Judiciary |
| | Ethics and Anti-corruption Commission |
| | Directorate of Public Prosecutions |
| | Commission for Implementation of the Constitution |
| | Registrar of Political Parties |
| | Witness Protection Program |
| | Kenya Natonal Human Rights and Equality Commission |
| | Independent Electoral and Boundaries Commission |
| | Parliamentary Service Commission |
| | Commission on Revenue Allocation |
| | Public Service Commission |
| | Salaries and Remuneration Commission |
| | Auditor-General |
| | Controller of Budget |
| | The Commission on Administrative Justice |
| | National Gender and Equality Commission |
| International Relations and Commerce | Ministry of Foreign Affairs |
| | Ministry of Industrialisation |
| | Ministry of Trade |
| | Ministry of East African Community |
| | Ministry of Tourism |
| | Ministry of Labour |
| | Ministry of Cooperative Development and Marketing |
| State Administration | State House |
| | Ministry of State for Public Service |
| | Ministry of State for Immigration and Registration of Persons |
| | Ministry of Justice, National Cohesion and Constitutional Affairs |
| | Ministry of Finance |
| | Cabinet Office |
| Regional Development | Office of the Prime Minister |
| | Ministry of State for Planning, National Development and Vision 2030 |
| | Ministry of Regional Development Authorities |
| | Office of Deputy Prime Minister and Minister for Local Government |
| | Ministry of Nairobi Metropolitan Development |
| | Ministry of Development of Northern Kenya and Other Arid Lands |
| Lands, Housing and Environment | Ministry of Housing |
| | Ministry of Lands |
| | Ministry of Environment and Mineral Resources |
| | Ministry of Forestry and Wildlife |
| Gender, Youth and Culture | Ministry of Gender, Children and Social Development |
| | Ministry of State for Special Programs |
| | Ministry of State for National Heritage and Culture |
| | Ministry of Youth Affairs and Sports |
| Other | Government Investment and Public Enterprises (Dept in the Ministry of Finance) |

**Source:**
Budget Expenditure Estimates Books, 2012/13

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**NOTE:** sums in the tables may be inexact due to rounding

# THE RIGHT PRIORITIES REVISITED: UNDERSTANDING WHAT THE KENYAN GOVERNMENT *ACTUALLY* SPENDS MONEY ON

BY JASON LAKIN AND JOHN KINUTHIA, INTERNATIONAL BUDGET PARTNERSHIP MARCH 2014

In February, we released a two-page brief looking at how the Kenyan government allocated its funds in FY 2012/13. The reason we did this is because the 2012/13 budget still informs the annual division of revenue in Kenya. The allocation to counties is based on the allocation for county functions (such as health and agriculture) in 2012/13. Adjustments have been made for inflation and for additional staffing costs of running county governments, but the costs for service delivery are still based on the sector allocations in the 2012/13 national budget. As we said in the previous brief, the question Parliament should ask itself this year is: should the priorities in 2012/13 still be the priorities in 2014/15?

While allocations are important, it is also important to look at how much is *actually* spent and on what. Often, the initial budget is changed during the year, and some sectors are better implemented than others. Kenya's priorities, when we consider actual spending, may be different from the initial allocations. We look at this issue here.

## Actual Expenditure

Table 1 on the next page presents all the sectors in the budget by total allocation (recurrent and development) in 2012/13. This is the same as Table 1 from the previous brief (see that brief for link between ministries and sectors).

In Table 2, we use the same sectors and ask: how much was actually spent in 2012/13 and on what sectors? Do our priorities look different when we look at what we actually spent as against our initial allocations? Table 2 provides figures on actual spending, as well as actual spending as a percentage of allocations. This table reveals that Kenya spends close to what it budgets for education and security, but substantially less in most sectors (except Parliament and other constitutional bodies, which receive more than budgeted).

**What do these tables tell us about the Kenyan budget?**

- The actual budget is smaller than it appears, with MDAs spending only about 817 billion of the 1109 allocated to them (74 percent of the allocation).
- The actual budget is more heavily weighted toward recurrent spending (76 percent of actual spending is for recurrent, compared to only 59 percent of allocations).
- Kenya spent more on recurrent than budgeted in 2012/13, but much less on development than initially budgeted (44 percent of budget), totaling less than 200 billion in development spending.

The overall picture is a budget that is smaller and more heavily weighted toward recurrent spending.

**What do these tables tell us about our priorities?**

- Education emerges as the area where Kenya spends the most: 28 percent of actual expenditure.
- Infrastructure falls from the largest sector to the third largest, dropping from about 1 in every 5 shillings to about 1 in every 9 shillings.
- Security emerges as the second largest sector, with 21 percent of actual spending.
- Parliament and other state offices take about 8 percent of actual spending, compared to 5 percent of allocations.
- After infrastructure, the next biggest amount of development spending is for regional development (27 billion), much of which is for CDF.

The actual budget (2012/13) prioritizes education and security over infrastructure, and spends relatively little on development, nearly half of which is tied up in national infrastructure projects and CDF (where it cannot be shared with counties). Is this the budget we want in 2014/15?

**Table 1: Where Does the Money Go? Sector Allocations in the 2012/13 Budget**

| Sectors (FY (2012/13) | Recurrent | Development | Total | Share | Cumulative Share |
|---|---|---|---|---|---|
| Infrastructure and Energy | 40 | 198 | 238 | 21% | 21% |
| Education | 209 | 27 | 236 | 21% | 43% |
| Security | 158 | 8 | 166 | 15% | 58% |
| Health (Including the Global Fund under the Ministry of Finance Estimates) | 55 | 41 | 96 | 9% | 66% |
| Planning and Regional Development | 27 | 41 | 69 | 6% | 73% |
| State Administration | 40 | 23 | 63 | 6% | 78% |
| Parliament, AG, Judiciary, and Constitutional Commissions | 53 | 6 | 59 | 5% | 84% |
| Water and Irrigation | 6 | 36 | 42 | 4% | 87% |
| Agriculture | 15 | 20 | 35 | 3% | 90% |
| Gender, Youth, and Culture | 19 | 16 | 34 | 3% | 94% |
| Lands, Housing, and Environment | 14 | 15 | 29 | 3% | 96% |
| International Relations and Commerce | 20 | 7 | 27 | 2% | 99% |
| Government Investment and Public Enterprises inc. Economic Recovery Programme | 1 | 15 | 16 | 1% | 100% |
| Total MDAs | 656 | 453 | 1109 | 100% | |

Source: Budget Expenditure Estimates Books, 2012/13

**Table 2: Actual Spending: Sector Expenditures in the 2012/13 Budget**

| Sectors FY (2012/13) Actual Spending (Ksh billions) | Actual Recurrent | Actual Development | Actual Total | Actual as % of Allocation | Actual Share of Total | Cumulative Share |
|---|---|---|---|---|---|---|
| Infrastructure and Energy | 23 | 65 | 87 | 37% | 11% | 11% |
| Education | 214 | 13 | 227 | 96% | 28% | 38% |
| Security | 167 | 5 | 171 | 103% | 21% | 59% |
| Health (Including the Global Fund under the Ministry of Finance Estimates)[1] | 56 | 22 | 78 | 81% | 10% | 69% |
| Regional Development | 5 | 27 | 32 | 47% | 4% | 73% |
| State Administration | 38 | 5 | 43 | 68% | 5% | 78% |
| Parliament, AG, Judiciary, and Constitutional Commissions | 55 | 9 | 64 | 109% | 8% | 86% |
| Water and Irrigation | 4 | 14 | 18 | 43% | 2% | 88% |
| Agriculture | 13 | 11 | 24 | 68% | 3% | 91% |
| Gender, Youth, and Culture | 17 | 10 | 27 | 77% | 3% | 94% |
| Lands, Housing, and Environment | 8 | 11 | 19 | 65% | 2% | 97% |
| International Relations and Commerce | 18 | 4 | 21 | 79% | 3% | 99% |
| Government Investment and Public Enterprises inc. Economic Recovery Programme[2] | 1 | 5 | 6 | 37% | 1% | 100% |
| Total MDAs | 618 | 199 | 817 | 74% | 100% | |

Source: Budget Estimates 2012/13, Controller of Budget Fourth Quarter Report FY 2012/13

NOTE: Sums in the tables may be inexact due to rounding

[1] Health= No information available on Global Fund (GF) figures, so assumed. GF implemented at Finance absorption rate of .33; GF= 8.8*.33= 2.9 billion.

[2] Government Investment: no information specifically on implementation so assumed at general Finance rate of .33 for development, .94 for recurrent.

# SHARING REVENUE: HOW MUCH IS ALREADY COMMITTED AND CANNOT BE SHARED?

BY JOHN KINUTHIA AND JASON LAKIN, INTERNATIONAL BUDGET PARTNERSHIP APRIL 2014

## Introduction

Every year, Kenyans must debate the national "division of revenue": how much money should go to counties and how much should go to national government. This is a debate about national priorities and should ensure that each level of government has adequate resources to carry out its functions.

However, there is a prior question. Just how much money is there? We need to start by understanding the total size of the budget, and then to understand which part of the budget is actually available to be negotiated each year.

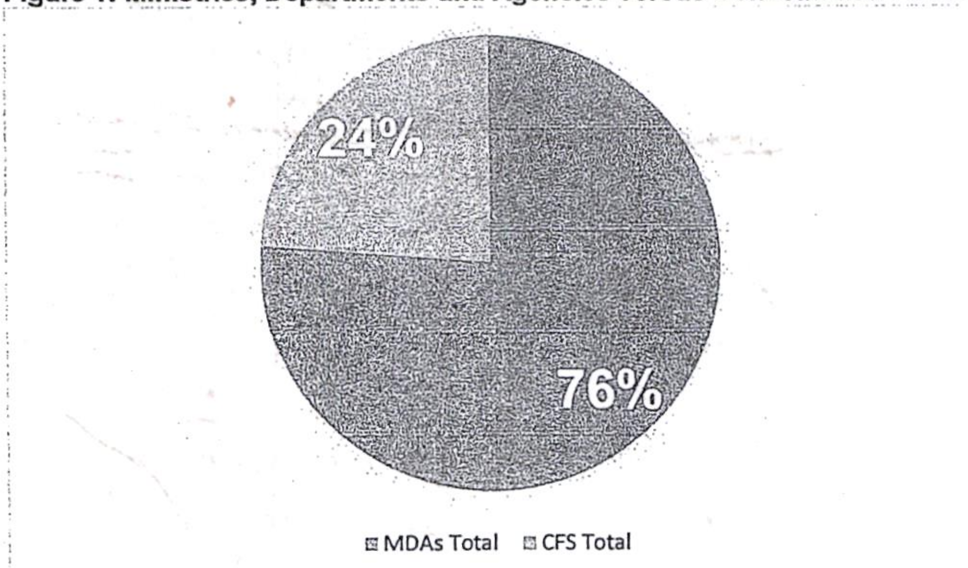
Governments will always have commitments for which they have to allocate funds each year and this reduces the amount of money that is available for service provision. These payments are known as "obligatory" or "non-discretionary" because they cannot be changed in a given year.

## Consolidated Fund Services

Kenya is no different. Debt repayment is an example of one such commitment for which Kenya has to allocate funds each year. Debt repayment is the main expenditure item under what is called Consolidated Fund Services (CFS). CFS also includes a smaller amount of money for pensions and some salaries for constitutional offices. These payments are also obligatory and cannot be changed in any given year without major legal reforms.

If we think about the total budget each year, it consists of two main parts: the budget for Ministries, Departments and Agencies (known as MDAs) and the budget for Consolidated Fund Services (CFS). Taken together, these give us a total expenditure of Ksh 1455 billion in 2012/13. Figure 1 below shows the breakdown of the 2012/13 Budget that went to MDAs and CFS.

**Figure 1: Ministries, Departments and Agencies versus Consolidated Fund Services in the 2012/13 Budget**




Source: Author's calculations

Table 1 below shows what has been happening to CFS recently. Over the past four years, the figure has been on the rise. Because these funds form part of the national share of revenues that cannot be negotiated, they reduce the funds available for other services every year.

The largest component of CFS over these years has gone to debt repayment (consistently over 80%, and rising). Why is debt repayment rising? The Kenyan government has been taking loans to fund many projects, particularly