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11/9/19



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
PAPERS LAID

PARLIAMENT OF KENYA

DATE: 11 SEP 2019

DAY:
WEDNESDAY

TWELFTH PARLIAMENT – THIRD SESSION

TABLED

BY:

HON. KAHUNGWATH
KIMANI

PREPARED BY:

ANNE SHIRUKU

THE REPORT OF



THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE (NO.2) BILL, 2019

PURSUANT TO ARTICLE 113 OF THE CONSTITUTION

JOINT CLERKS CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI.

SEPTEMBER 2019

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1. INTRODUCTION

1.1. Establishment of the Committee

The Mediation Committee on the Division of Revenue (No. 2) Bill 2019, (National Assembly Bills No. 59) was constituted by the Speaker of the National Assembly, pursuant to Standing Order 149 (2) of Standing Orders of the National Assembly, and the Speaker of the Senate, pursuant to Standing Order 160 (2) of Standing Orders of the Senate, on 9th August, 2019, and 14th August, 2019 respectively.

The Committee membership was constituted as follows-

- | | |
|--------------------------------------------|--------------------|
| 1. Hon. Kimani Ichung'wah, CBS, M.P. | - Chairperson |
| 2. Sen. (Eng.) Mohamed M. Mahamud, CBS, MP | - Vice Chairperson |
| 3. Hon. Aden Duale, EGH, MP. | |
| 4. Hon. (CPA) John Mbadi, EGH, CBS, MP | |
| 5. Hon. Junet Nuh Mohammed, MP | |
| 6. Sen. Mutula Kilonzo, MP | |
| 7. Hon. Cecily Mbarire, MGH, MP | |
| 8. Sen. Johnson Sakaja, CBS, MP | |
| 9. Hon. (Dr.) Makali Mulu, MP | |
| 10. Sen. (Prof.) Margaret Kamar, MP | |
| 11. Hon. Amos Kimunya, EGH, MP | |
| 12. Sen. Charles Kibiru, MP | |
| 13. Sen. Rose Nyamunga, MP | |
| 14. Sen. Ledama Ole Kina, MP | |
| 15. Hon. Mishi Mboko, MP | |
| 16. Sen. Okong'o Omogeni, MP | |
| 17. Hon. David Ole Sankok, MP | |
| 18. Sen. Mithika Linturi, MP | |

During the first sitting Hon. Kimani Ichung'wah, CBS, M.P. and Hon. (Dr.) Makali Mulu, MP were temporary replaced with-

1. Hon. Moses Lessonet, MP
2. Hon. Daniel Maanzo, MP

3. The Mediation Committee Report on the Division of Revenue (No.2) Bill, 2019

1.2. Committee Secretariat¹

- | | |
|----------------------------|---------------------------------------------|
| 1. Ms. Emmy Chepkwony | Principal Committee Clerk/ Senate |
| 2. Mr. Chacha Machage | Fiscal Analyst II & Committee Clerk / NA |
| 3. Mr. Christopher Gitonga | Clerk Assistant II/ Committee Clerk/ Senate |
| 4. Mr. James Kimiti | Audio Officer |

1.3. Mandate of the Mediation Committee

The Mediation Committee derives its mandate from the provisions of Articles 112 and 113 of the Constitution, Standing Order 149 of Standing Orders of the National Assembly and Standing Order 160 of Standing Orders of the Senate which outlines the functions of the Committee as follows-

- i. *To consider Bills where the Houses do not agree on all or any of the amendments made by either Houses;*
- ii. *To consider Bills where either House rejects a Motion that a Bill which originated in the other House be read a Second or Third time; and,*
- iii. *To attempt to develop a version of the Bill that both Houses will pass.*

The Committee was established to develop an agreed version of the Division of Revenue (No.2) Bill, 2019 and develop a version to be presented to both Houses for approval pursuant to standing order 150 of the Standing Orders of the National Assembly and standing order 161 (1) of the Standing Orders of the Senate. The issues for consideration by the Committee included;

- a) *County Equitable share;*
- b) *Conditional allocation on leasing of Managed Equipment Services; and*
- c) *Conditional allocation on the Water Tower Protection and Climate Change mitigation and Adaptation program.*

1.4. Committee Meetings and Methodology

The Committee held a total of three (3) sittings to deliberate on the Division of Revenue (No. 2) Bill, 2019 (National Assembly Bills No. 59) in accordance with the Constitution and relevant provisions of the Standing Orders of the Senate and the National Assembly.

During the first sitting, the Committee appointed Hon. Kimani Ichung'wah, CBS, MP and Sen. (Eng.) Mohamed M. Mahamud, CBS, MP as the Chairperson and the Vice-Chairperson respective-

¹ The Committee also received technical support from the Parliamentary Budget Office & the Legal Departments from both Houses.

ly pursuant to standing order 160 (4) of Standing Orders of the Senate and Standing Order 149(4) of Standing Orders of the National Assembly. In addition, the Committee also made reference to the report of the pioneering Mediation Committees that recommended that the Chair of the mediation Committee should be elected from amongst members of the House that originated the Bill.

In the second and third meetings, the Committee unanimously agreed on common version of the Bill and this is appended to this report for consideration by both Houses.

1.5. Acknowledgements

The Committee is grateful to the offices of the Speakers and the Clerks of both Houses of Parliament for the support it received as it discharged its mandate.

It is now my pleasant duty and privilege, on behalf of the Mediation Committee on the Division of Revenue (No. 2) Bill, 2019 (National Assembly Bills No. 59), to present and commend this report including the agreed version of the Bill to the Houses for approval pursuant to Article 113(2) of the Constitution and standing order 161(1) of Standing Orders of the Senate and standing order 150 (1 & 3) of standing order of the National Assembly.

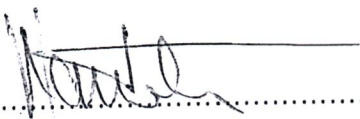
HON. KIMANI ICHUNG'WAH, CBS, M.P.

- COMMITTEE CHAIRPERSON

SIGNED 

DATE: 11/09/2019

SEN. (ENG.) MOHAMED M. MAHAMUD, CBS, MP – COMMITTEE VICE CHAIRPERSON

SIGNED 

DATE: 11/09/2019

2. BACKGROUND

The Division of Revenue (No. 2) 2019, (National Assembly Bill No. 59) provides the basis for sharing of revenue raised nationally between the National Government and County Governments for the financial year 2019/20 in accordance with Article 202, 203, 205 and 218 (2) of the Constitution. The Bill therefore sets out the; *i*) sharable revenue, *ii*) National Government share of revenue, *iii*) county equitable share of revenue, *iv*) conditional grants and *v*) allocations to the Equalization fund.

Article 202 of the Constitution, expressly makes it obligatory for the nationally raised revenue to be shared equitably among the national and County Governments. Article 203 (2), guarantees that County Governments get not less than 15 percent of the equitable share. In addition, the revenue shared shall be calculated on the basis of the most recent audited accounts of revenue, as approved by the National Assembly. In this case, the FY 2014/15 audited revenue worth Kshs. 1,038.04 billion, was the basis of revenue determination.

The Division of Revenue (No. 2) Bill, 2019 (National Assembly Bills No. 59) was published with a fiscal framework of a total shareable revenue worth Kshs 1.877 trillion. The National Governments share of equitable revenue was Kshs. 1.561 trillion and the bill also proposed that national exchequer allocations worth Kshs. 339.39 billion be allocated to County Governments, broken down as follows:

- i. County Equitable Share worth Kshs. 316.5 billion
- ii. Conditional allocations from the National Government Share of revenue worth Kshs. 13.91 billion
- iii. Allocation from the Fuel Levy fund worth Kshs. 8.98 billion

In addition to the national exchequer allocations, the bill also allocates Kshs. 38.7 billion to County Governments as Conditional allocations from loans and grants, therefore bringing the total allocation to County Governments in FY 2019/20 to Kshs 378.1 billion.

The Bill was passed by the National Assembly on 25th July, 2019 without amendments and transmitted to the Senate for consideration. On 7th August, 2019, the Senate considered and passed the Bill with the following amendments-

- i. An increase of Kshs. 19.17 Billion to the Equitable Share allocation from Kshs. 316.5 Billion to Kshs. 335.67 Billion,
- ii. The removal of the conditional allocation on leasing of medical equipment of Kshs. 6.20 Billion, and;
- iii. An increase, by Kshs. 385 Million, the conditional allocation from development partners on the EU- Water Tower Protection and Climate Change Mitigation and Adaptation Program (WaTER).

The National Assembly rejected the amendments to the Division of Revenue Bill (No.2), 2019, as proposed by the Senate and the Bill was thereafter referred to a Mediation Committee, in line with the provisions of Article 113 of the Constitution.

3. CONSIDERATION OF THE DIVISION OF REVENUE (NO. 2) BILL, 2019

The Committee therefore set out to reach a consensus and develop an agreed version of the Division of Revenue Bill, 2019 and therefore considered the following issues;

- i. the increase of the County Equitable Share from Ksh. 316.5.1 billion to Ksh. 335.76 billion,
- ii. The removal of the conditional allocation on leasing of medical equipment of Kshs. 6.20 billion, and;
- iii. The increase of resource allocation to the *Water Tower Protection and Climate Change Mitigation and Adaptation program* by Kshs. 385 Million to Ksh.880 million.

4. COMMITTEE OBSERVATIONS:

After deliberations, the following issues were observed by the committee:

- i. That indeed there is urgent need to approve the DoRB 2019 and cause the County Allocation of Revenue Bill, 2019 to proceed.
- ii. That there was no room to finance the increase in the county equitable share of revenue due to fiscal constraint
- iii. The Mediation Committee considered the issues raised by both Houses and consequently developed the mediated version of the Bill, which is hereby annexed. Therefore, all matters

having been considered and decided by consensus, this report is therefore a unanimous decision of the Committee.

- iv. That it was an immutable that counties could not prepare their annual budgets as contemplated under Article 224 of the Constitution due to a lacuna in the law that fails to give remedial relief to counties where DoRB is not passed by Parliament before the end of a financial year.

5. COMMITTEE RECOMMENDATION

Upon reaching consensus, the Committee therefore recommends the following;

1. That this House to approves the Bill as follows:
 - i. That the County Equitable Share allocation for Financial Year 2019/2020 be Kshs. 316.5 billion.
 - ii. That the allocation to the leasing of Managed Equipment Services for financial year 2019/2020 be Ksh. 6.2 billion, subject to the following;
 - a) That before the next Division of Revenue Bill, 2020, there shall be a proper disclosure on the costing of equipment under the MES program.
 - b) Parliament shall establish a Special Ad-hoc Joint Committee on MES to conduct a thorough investigation and table a report in Parliament for approval. The Ad-hoc Committee should table the report before the end of the 3rd session of Parliament.
 - iii. That the allocation to the Water Tower Protection and Climate Change Mitigation and Adaptation Program for financial year 2019/2020 be Ksh.880 million.
2. The Budget and Appropriations Committee of the National Assembly and the Senate Standing Committee on Finance and Budget jointly embark on creating a National Policy Framework on the Management of Conditional Grants to counties, before the end of the next Financial Year.
3. That Parliament expedites the amendment to the PFMA, 2012, to ensure that in the event the DORB is not passed before the end of a financial year, counties can access a percentage of nationally raised revenue.
4. That this House adopts and approves the report of the Mediation Committee on the Division of Revenue (No. 2) Bill 2019, (National Assembly Bills No. 59).

8. The Mediation Committee Report on the Division of Revenue (No.2) Bill, 2019



REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS
(Bill No. 59 of 2019)

THE DIVISION OF REVENUE (NO. 2) BILL, 2019

(A version of the division of revenue bill (No. 2) Bill 2019 (National Assembly Bill No. 59 of 2019) as agreed on 11th September, 2019, by a mediation committee appointed pursuant to Article 113 of the Constitution.)

N.A. /B/No. 59/2019

THE DIVISION OF REVENUE (NO.2) BILL, 2019

ARRANGEMENT OF CLAUSES

Clause

- 1—Short title.
- 2—Interpretation.
- 3—Object and purpose of the Act.
- 4—Allocations to national and county governments.
- 5—Variation in revenue.

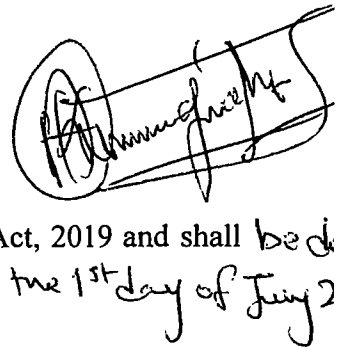
**SCHEDULE— ALLOCATION OF REVENUE RAISED NATIONALLY TO THE
NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2019/20**

THE DIVISION OF REVENUE (NO. 2) BILL, 2019

A Bill for

AN ACT of Parliament to provide for the equitable division of revenue raised nationally between the national and county governments in 2019/20 financial year, and for connected purposes

ENACTED by Parliament of Kenya, as follows—



Handwritten signature and date: "1st day of July 2019" with a signature over it.

Short title and commencement.

1. This Act may be cited as the Division of Revenue Act, 2019 and shall ~~come into force upon publication in the Gazette~~ ^{to have} come into force ~~on the 1st day of July 2019~~ ^{on the 1st day of July 2}

Interpretation.

2. In this Act, unless the context otherwise requires—

No. 16 of 2011.

“Revenue” has the meaning assigned to it under section 2 of the Commission on Revenue Allocation Act, 2011.

Object and purpose of the Act.

3. The object and purpose of this Act is to provide for the equitable division of revenue raised nationally between the national and county levels of government for the financial year 2019/20 in accordance with Article 203 (2) of the Constitution.

Allocations to national and county governments.

4. Revenue raised by the national government in respect of the financial year 2019/20 shall be divided among the national and county governments as set out in the Schedule to this Act.

Variation in revenue.

5. (1) If the actual revenue raised nationally in the financial year falls short of the expected revenue set out in the Schedule, the shortfall shall be borne by the national government.

(2) If the actual revenue raised nationally in the financial year exceeds the projected revenues set out in the Schedule, the excess revenue shall accrue to the national government, and may be used to reduce borrowing or pay debts.

SCHEDULE (s.4)

ALLOCATION OF REVENUE RAISED NATIONALLY AMONG THE NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2019/20

Type/Level of Allocation	Amount in Ksh.	Percentage (%) of 2014/15 audited and approved Revenue i. Ksh.1,038,0 Millions
A. National Government	1,554,916,497,191	
Of which:		
1. <i>Leasing of Medical Equipment</i>	6,200,000,000	
2. <i>Compensation for user fees forgone</i>	900,000,000	
3. <i>Level 5 hospitals</i>	4,326,000,000	
4. <i>Supplement for construction of county headquarters</i>	485,152,184	
5. <i>Rehabilitation of Youth Polytechnics</i>	2,000,000,000	
B. Equalization Fund	5,760,000,000	0.60
C. County equitable share	316,500,000,000	30.49
D. Total shareable revenue	1,877,176,497,191	
Memo items		
1. County equitable share	316,500,000,000	
2. Additional conditional allocations (National Government share of Revenue) of which;	13,911,152,184	
2.1. <i>Leasing of Medical Equipment</i>	6,200,000,000	
2.2. <i>Compensation For User Fees Forgone</i>	900,000,000	
2.3. <i>Level 5 Hospitals</i>	4,326,000,000	
2.4. <i>Supplement For Construction Of County Headquarters</i>	485,152,184	
2.5. <i>Rehabilitation of Youth Polytechnics</i>	2,000,000,000	
3. Allocation from Fuel Levy Fund (15%)	8,984,062,500	
4. Conditional allocations (Loans & grants) of which:	39,089,877,210	
4.1. <i>IDA-Kenya Devolution Support Program (KDSP) Level 1</i>	1,410,000,000	
4.2. <i>IDA-Kenya Devolution Support Program (KDSP) (Level 2 Grant)</i>	4,890,000,000	
4.3. <i>IDA-Transforming Health Systems for Universal Care</i>	2,994,247,736	

Type/Level of Allocation	Amount in Ksh.	Percentage (%) of 2014/15 audited and approved Revenue in Ksh.1,038,000 Millions
<i>Project</i>		
4.4 DANIDA-Universal Healthcare For Devolved System Program	986,583,544	
4.5 IDA-National Agriculture & Rural Inclusive Growth Project (NARIGP)	7,232,719,940	
4.6 EU-Instruments for Devolution Advice and Support (IDEAS)	492,698,583	
4.7 IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)	3,643,298,670	
4.8 World Bank- Kenya Urban Support Program(KUSP)- UDG	11,464,702,500	
4.9 World Bank- Kenya Urban Support Program(KUSP)- UIG	396,000,000	
4.10 IDA- Water and Sanitation Development Project (WSDP)	3,500,000,000	
4.11 Sweden Agriculture Sector Development Programme II (ASDP II)	849,626,237	
4.12 EU- Water Tower Protection and Climate Change Mitigation and Adaptation Programme (WaTER)	880,000,000	
4.13 Drought Resilience Programme in Northern Kenya	350,000,000	
Total County Allocations= (1+2+3+4)	378,485,091,894	36.4
<p><i>*The National Government share includes Ksh. 4,300 million which is a special grant to the National Health Insurance Fund (NHIF) for free Maternal health care, to be disbursed as a reimbursement to county governments.</i></p>		

MEMORANDUM OF OBJECTS AND REASON

The principal object of this Bill is to provide for the equitable division of revenue raised nationally among the national and county levels of government as required by Article 218 of the Constitution, in order to facilitate the proper functioning of county governments and to ensure continuity of county services.

Clauses 1 and 2 of the Bill provide for the short title of the Bill and the interpretation of terms used in the Bill.

Clause 3 of the Bill contains the provisions on the objects and purpose of the Bill.

Clause 4 of the Bill prescribes the allocations for the national government and the county governments from the revenue raised nationally for the financial year 2019/20.






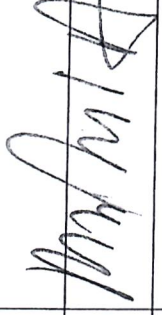




Clause 5 of the Bill deals with mechanisms for adjusting for variations in revenues emanating from revenue performance during the financial year in which this Bill relates to.









Dated, 2019.

MEDIATION COMMITTEE II ON THE DIVISION OF REVENUE BILL (NO.2), 2019

REPORT ADOPTION SCHEDULE

DATE 11/04/2019 TIME 12:50 P.M. SITTING SKP

<u>NO.</u>	<u>NAME</u>	<u>SIGNATURE</u>
1.	Hon. Kimani Ichung'wah, CBS, MP - Chairperson	
2.	Sen. (Eng.) Mohamed M. Mahamud, CBS, MP - Vice Chairperson	
3.	Hon. Aden Duale, EGH, MP.	
4.	Hon. John Mbadi, EGH, CBS, MP	
5.	Hon. Junet Nuh Mohammed, MP	
6.	Sen. Mutula Kilonzo, MP	
7.	Hon. Cecily Mbarire, MGH, MP	
8.	Sen. (Prof.) Margaret Kamar, MP	
9.	Sen. Mithika Linturi, MP	
10.	Hon. (Dr.) Makali Mulu, MP	

<u>NO.</u>	<u>NAME</u>	<u>SIGNATURE</u>
11.	Hon. Amos Kimunya, EGH, MP	
12.	Sen. Charles Kibiru, MP	
13.	Sen. Rose Nyamunga, MP	
14.	Hon. Mishi Mboko, MP	
15.	Sen. Johnson Sakaja, CBS, MP	
16.	Hon. David Ole Sankok, MP	
17.	Sen. Ledama Ole Kina, MP	
18.	Sen. Okong'o Omogeni, MP	

MINUTES OF THE 3RD SITTING OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE (NO.2) BILL 2019, (NATIONAL ASSEMBLY BILL NO. 59) HELD ON WEDNESDAY, 11TH SEPTEMBER, 2019, AT THE COUNTY HALL-MINI CHAMBERS, PARLIAMENT BUILDINGS, AT 12 NOON.

PRESENT:

1. **Hon. Kimani Ichung'wah, CBS, M.P.** - Chairperson
2. **Sen. (Eng.) Mohamed M. Mahamud, CBS, MP** - Vice Chairperson
3. Hon. Aden Duale, EGH, MP.
4. Hon. (CPA) John Mbadi, EGH, CBS, MP
5. Sen. Mutula Kilonzo, MP
6. Sen. Johnson Sakaja, CBS, MP
7. Hon. Amos Kimunya, EGH, MP
8. Sen. Charles Kibiru, MP
9. Sen. Rose Nyamunga, MP
10. Hon. Mishi Mboko, MP
11. Hon. (Dr.) Makali Mulu, MP
12. Sen. Mithika Linturi, MP
13. Hon. David Ole Sankok, MP

ABSENT WITH APOLOGIES

1. Hon. Cecily Mbarire, MGH, MP
2. Sen. Okong'o Omogeni, MP
3. Sen. (Prof.) Margaret Kamar, MP
4. Sen. Ledama Ole Kina, MP
5. Hon. Junet Nuh Mohammed, MP

COMMITTEE SECRETARIAT

- | | |
|----------------------------|---------------------------------------------|
| 1. Mr. Chacha Machage | Fiscal Analyst II & Committee Clerk / NA |
| 2. Mr. Christopher Gitonga | Clerk Assistant II/ Committee Clerk/ Senate |
| 3. Mr. James Kimiti | Audio Officer |
| 4. Mr. Ali Salat | Serjeant-at-Arms |

PARLIAMENTARY TECHNICAL STAFF

- | | |
|-----------------------|---------------------------|
| 1. Ms. Vane Akama | Director – Legal Services |
| 2. Ms. Jemimah Waigwa | Legal Counsel I |
| 3. Ms. Lucy Radoli | Legal Counsel II |
| 4. Ms. Julie Mwithiga | Fiscal Analyst II |
| 5. Mr. Elly Atamba | Research Officer |

MIN. NO. 11/DORB (NO. 2) /2019: Preliminaries

The Chairperson called the meeting to Order at 12:05 pm and there followed a word of prayer.

MIN. NO. 12/DORB (NO. 2) /2019: ADOPTION OF THE AGENDA

The agenda was adopted was proposed by Sen. Johnson Sakaja, MP, and seconded by Hon. Mishi Mboko, MP.

MIN. NO. 13/DORB (NO.2)/2019: CONFIRMATION OF MINUTES

The Minutes of the 2nd meeting was confirmed as the true proceedings of the meeting held on Wednesday, 11th September, 2019 having being proposed by Hon. Makali Mulu, MP and Seconded by Sen. Mutula Kilonzo Junior, MP.

**MIN. NO. 14/DORB (NO.2) /2019: CONSIDERATION AND ADOPTION OF
THE REPORT ON THE DIVISION OF
REVENUE (NO. 2) BILL, (NATIONAL
ASSEMBLY BILL NO. 59 OF 2019)**

The Committee observed that during the protracted mediation process on the Division of Revenue Bill (No. 2) 2019, it was an immutable that counties could not prepare their annual budgets as contemplated under Article 224. This unintended consequence of the legislative process was as a result of a lacuna in the law that fails to give remedial relief to counties where DORB is not passed by Parliament before the end of a financial year.

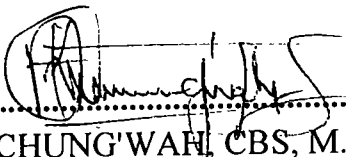
The Committee therefore recommended that Parliament should expedite the amendment to the PFMA to ensure that in the event the DORB is not passed before the end of a financial year, counties can access a percentage of nationally raised revenue

The Committee considered the report and unanimously adopted it after it was proposed by Hon. David Ole Sankok and seconded by Sen. Charles Kibiru, MP.

MIN. NO. 15/DORB (NO.2) 2019: ANY OTHER BUSINESS & ADJOURNMENT

There being no other business the meeting was adjourned at 12:15 pm.

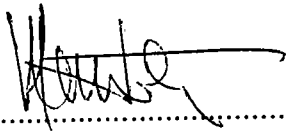
SIGNED:



HON. KIMANI ICHUNG'WAH, CBS, M.P. -CHAIRPERSON

DATE:

SIGNED:



SEN. (ENG.) MOHAMED M. MAHAMUD, CBS, M.P.- VICE CHAIRPERSON

DATE:

11/09/19

MINUTES OF THE 2ND SITTING OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE (NO.2) BILL 2019, (NATIONAL ASSEMBLY BILL NO. 59) HELD ON WEDNESDAY, 11TH SEPTEMBER, 2019, AT THE COUNTY HALL-MINI CHAMBERS, PARLIAMENT BUILDINGS, AT 11.00 A.M.

PRESENT:

1. Hon. Kimani Ichung'wah, CBS, M.P. - Chairperson
2. Sen. (Eng.) Mohamed M. Mahamud, CBS, MP - Vice Chairperson
3. Hon. Aden Duale, EGH, MP.
4. Hon. (CPA) John Mbadi, EGH, CBS, MP
5. Sen. Mutula Kilonzo, MP
6. Sen. Johnson Sakaja, CBS, MP
7. Hon. Amos Kimunya, EGH, MP
8. Sen. Charles Kiburu, MP
9. Sen. Rose Nyamunga, MP
10. Hon. Mishi Mboko, MP
11. Hon. (Dr.) Makali Mulu, MP
12. Sen. Mithika Linturi, MP
13. Hon. David Ole Sankok, MP

ABSENT WITH APOLOGIES

1. Hon. Cecily Mbarire, MGH, MP
2. Sen. Okong'o Omogeni, MP
3. Sen. (Prof.) Margaret Kamar, MP
4. Sen. Ledama Ole Kina, MP
5. Hon. Junet Nuh Mohammed, MP
- 6.

COMMITTEE SECRETARIAT

- | | |
|----------------------------|---------------------------------------------|
| 1. Mr. Chacha Machage | Fiscal Analyst II & Committee Clerk / NA |
| 2. Mr. Christopher Gitonga | Clerk Assistant II/ Committee Clerk/ Senate |
| 3. Mr. James Kimiti | Audio Officer |
| 4. Mr. Ali Salat | Serjeant-at-Arms |

PARLIAMENTARY TECHNICAL STAFF

- | | |
|-----------------------|---------------------------|
| 1. Ms. Vane Akama | Director – Legal Services |
| 2. Ms. Jemimah Waigwa | Legal Counsel I |
| 3. Ms. Lucy Radoli | Legal Counsel II |
| 4. Ms. Julie Mwithiga | Fiscal Analyst II |
| 5. Mr. Elly Atamba | Research Officer |

MIN. NO. 6/DORB (NO. 2) /2019: Preliminaries

The Chairperson called the meeting to Order at 11:20 am and there followed a word of prayer.

MIN. NO. 7/DORB (NO. 2) /2019: ADOPTION OF THE AGENDA

The agenda was adopted was proposed by Sen. Mutula Junior, MP, and seconded by Hon. David Ole Sankok, MP.

MIN. NO. 8/DORB (NO.2)/2019: CONFIRMATION OF MINUTES

The Minutes of the 1st meeting was confirmed as the true proceedings of the meeting held on Tuesday, 20th August, 2019 having being proposed by Hon. Aden Duale, MP and Seconded by Sen. (Dr.) Rose Nyamunga, MP.

MIN. NO. 9/DORB (NO.2) /2019: MEDIATION ON THE DIVISION OF REVENUE (NO. 2) BILL, (NATIONAL ASSEMBLY BILL NO. 59 OF 2019)

Sen. (Eng.) Mohamed M. Mahamud, CBS, M.P., reported that Senate held a meeting and proposed that the Mediation Committee may approve the mediated version of the Bill as follows-

- a) an Equitable Share of revenue of Kshs. 316.5 billion to the county governments;
- b) Conditional allocations on Leasing of Managed Equipment Services be Kshs. 6.2 billion;
- c) An increase by Kshs. 385 Million, to the conditional allocation from development partners on the *EU- Water Tower Protection and Climate Change Mitigation and Adaptation Program (WaTER)*.

The Committee unanimously adopted the proposal from the Senate.

Further on Leasing of Managed Equipment Services the Committee resolved-

- i. That before the next Division of Revenue Bill, 2020, there shall be a proper disclosure on the costing of equipment under the MES programme.
- ii. The Budget and Appropriations Committee of the National Assembly and the Senate Standing Committee on Finance and Budget jointly embark on creating a National Policy Framework on the Management of Conditional Grants to counties, before the end of the next Financial Year.

- iii. Parliament shall establish a Special Adhoc Joint Committee on MES to conduct a thorough investigation and table a report in Parliament for approval. The Committee should table the report before the end 3rd session of the Parliament..

MIN. NO. 10/DORB (NO.2) 2019: ANY OTHER BUSINESS & ADJOURNMENT

There being no other business the meeting was adjourned at 12 noon

SIGNED:

HON. KIMANI ICHUNG WAH, CBS, M.P. -CHAIRPERSON

DATE:

SIGNED:

SEN. (ENG.) MOHAMED M. MAHAMUD, CBS, M.P.- VICE CHAIRPERSON

DATE: 11/9/19

MINUTES OF THE 1ST SITTING OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE (NO.2) BILL 2019, (NATIONAL ASSEMBLY BILL NO. 59) HELD ON TUESDAY, 20TH AUGUST, 2019, AT THE COUNTY HALL-MINI CHAMBERS, PARLIAMENT BUILDINGS, AT 11.00 A.M.

PRESENT:

1. **Sen. (Eng.) Mohamed M. Mahamud, CBS, MP –Vice Chairperson - Chairing**
2. Hon. Aden Duale, EGH, MP.
3. Hon. (CPA) John Mbadi, EGH, CBS, MP
4. Hon. Junet Nuh Mohammed, MP
5. Sen. Mutula Kilonzo, MP
6. Hon. Moses Lessonet, MP
7. Hon. Cecily Mbarire, MGH, MP
8. Hon. Daniel Maanzo, MP
9. Sen. Johnson Sakaja, CBS, MP
10. Sen. (Prof.) Margaret Kamar, MP
11. Hon. Amos Kimunya, EGH, MP
12. Sen. Charles Kibiru, MP
13. Sen. Rose Nyamunga, MP
14. Sen. Ledama Ole Kina, MP
15. Hon. Mishi Mboko, MP
16. Sen. Okong’o Omogeni, MP
17. Hon. David Ole Sankok, MP

ABSENT WITH APOLOGIES

1. **Hon. Kimani Ichung’wah, CBS, M.P. - Chairperson**
2. Hon. (Dr.) Makali Mulu, MP
3. Sen. Mithika Linturi, MP

COMMITTEE SECRETARIAT

- | | |
|----------------------------|---------------------------------------------|
| 1. Ms. Emmy Chepkwony | Principal Committee Clerk/ Senate |
| 2. Mr. Chacha Machage | Fiscal Analyst II & Committee Clerk / NA |
| 3. Mr. Christopher Gitonga | Clerk Assistant II/ Committee Clerk/ Senate |
| 4. Mr. James Kimiti | Audio Officer |
| 5. Mr. Ali Salat | Serjeant-at-Arms |

PARLIAMENTARY TECHNICAL STAFF

- | | |
|----------------------------|----------------------------------------|
| 1. Ms. Phyllis Makau (OGW) | Director – Parliamentary Budget Office |
| 2. Ms. Vane Akama | Director – Legal Services |
| 3. Mr. Martin Masinde | Senior Deputy Director (PBO) |
| 4. Ms. Jemimah Waigwa | Legal Counsel I |
| 5. Ms. Lucy Radoli | Legal Counsel II |
| 6. Ms. Julie Mwithiga | Fiscal Analyst II |

MIN. NO. 1/DORB (NO. 2) /2019: PRELIMINARIES

1. The Principal Committee Clerk, Ms. Emmy Chepkwony, welcomed the members to the meeting and called the meeting to order at 11.15 a.m. The prayers were then read by Hon. Moses Lessonet, MP.
2. The Committee was informed that in line with Standing Orders 149(2) (National Assembly Standing Orders), a communication from the Speaker of the National Assembly had been received replacing two (2) absent Members of the Committee on a temporary basis.
3. Therefore, the Committee heard that Hon. Kimani Ichung'wah, CBS, MP and Hon. Makali Mulu, MP., were temporarily replaced by Hon. Moses Lessonet, MP and Hon. Daniel Maanzo, MP., respectively.
4. The Committee resolved to hold its sittings open to the media and members of the public, in accordance with the Standing Orders of both Houses.

MIN. NO. 2/DORB (NO. 2) /2019: ADOPTION OF THE AGENDA

The agenda was adopted with amendments and was proposed by Hon. Aden Duale, EGH, MP., and seconded by Sen. Ledama Ole Kina, MP. It was adopted as follows:

1. Prayer
2. Election of the Chairperson and the Vice Chairperson
3. Mediation on the Division of Revenue Bill (No.2), (National Assembly Bill No. 59 of 2019).
4. Any Other Business
5. Adjournment

MIN. NO. 3/DORB (NO.2)/2019: ELECTION OF THE CHAIRPERSON AND VICE CHAIRPERSON

The first sitting of the Mediation Committee on the election of Chairperson and Vice Chairperson was facilitated by the representative of the office of the Clerk, subject to the provisions of Standing Orders 193 and 149 of the Senate and National Assembly Standing Orders, respectively.

The attention of the Committee was drawn to Article 113 of the Constitution and Standing Orders 149 and 160 of the National Assembly and Senate, Standing Orders, respectively on the establishment, mandate, membership and procedure for election of Chairperson and Vice Chairperson of a Mediation Committee.

The Committee made reference to the set precedence and the report of the pioneering Mediation Committee that recommended that in future mediations, the Chairperson of the Mediation Committee be elected from amongst members of the House that originates the Bill.

After deliberations, the Committee unanimously elected-

- i. Hon. Kimani Ichung'wah, CBS, M.P., as the Chairperson of the Committee, after being proposed and Seconded by Hon. John Mbadi, EGH, CBS, MP., and Hon. Adan Duale, EGH, MP., respectively; and,
- ii. Sen. (Eng.) Mohamed M. Mahamud, CBS, M.P., as the Vice Chairperson of the Committee after being Proposed and seconded by Hon John Mbadi, EGH, CBS, MP and Hon. Mishi Mboko, MP., respectively.

**MIN. NO. 4/DORB (NO.2) /2019: MEDIATION ON THE DIVISION OF
REVENUE (NO. 2) BILL, (NATIONAL
ASSEMBLY BILL NO. 59 OF 2019)**

Sen. (Eng.) Mohamed M. Mahamud, CBS, M.P., acting Chairperson welcomed the Director, Parliamentary Budget Office to brief the Committee on the issues that had led to the formation of the Mediation Committee.

The Committee was therefore informed that the Division of Revenue Bill - No. 2 (National Assembly Bills No. 59 of 2019) was published on 16th July 2019, recommending-

- a) an Equitable Share of revenue of Kshs. 316.5 billion to the county governments and Kshs. 1,561.42 billion to the national government;
- b) Conditional allocations worth Kshs. 22.89 billion, including allocations from Fuel Levy Fund (15%) from the national government; and,
- c) Conditional allocations (loans and grants from development partners) worth Kshs. 38.70 billion.

It was passed by the National Assembly on 25th July, 2019 without amendments and transmitted to the Senate for consideration. On 7th August, 2019, the Senate considered and passed the Bill with the following amendments-

- a) An increase of Kshs. 19.17 Billion to the Equitable Share allocation from Kshs. 316.5 Billion to Kshs. 335.67 Billion.
- b) The removal of the conditional allocation on leasing of medical equipment of Kshs. 6.20 Billion from the Division of Revenue Bill (No.2), 2019.

The Committee was also informed that they would also consider amendments to increase, by Kshs. 385 Million, the conditional allocation from development partners on the *EU-Water Tower Protection and Climate Change Mitigation and Adaptation Program (WaTER)*.

The National Assembly rejected the amendments to the Division of Revenue Bill (No.2), 2019, as proposed by the Senate and the Bill was thereafter referred to a Mediation Committee, in line with the provisions of Article 113 of the Constitution.

Deliberations on the Equitable share allocation.

Upon deliberations the Committee did not agree on the Equitable Share allocation. The two proposals were retained as follows:

- i. *The Equitable Share for Counties be Kshs. 316.5 Billion as proposed by the National Assembly; and,*
- ii. *The Equitable Share be at Kshs. 335 Billion as proposed by the Senate.*

There being no agreement on the County Equitable Share, consideration on the matter was deferred to the next sitting of Wednesday, 28th August, 2019.

MIN. NO. 5/DORB (NO.2) 2019: ANY OTHER BUSINESS & ADJOURNMENT

There being no other business the meeting was adjourned at 1.20 p.m. with the next sitting to be held on **Wednesday, 28th August, 2019 at 11.00 a.m.**

SIGNED:


HON. KIMANI ICHUNG'WAH, CBS, M.P. -CHAIRPERSON

DATE:

11/09/2019

SIGNED:


SEN. (ENG.) MOHAMED M. MAHAMUD, CBS, M.P.- VICE CHAIRPERSON

DATE:

11/9/19



REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS
(Bill No. 59 of 2019)

THE DIVISION OF REVENUE (NO. 2) BILL, 2019

(A mediated version of the Division of Revenue Bill (No. 2) Bill 2019 (National Assembly Bill No. 59 of 2019) as agreed on 11th September, 2019, by the Mediation Committee appointed pursuant to Article 113 of the Constitution.)

N.A. /B/No. 59/2019

THE DIVISION OF REVENUE (NO.2) BILL, 2019

ARRANGEMENT OF CLAUSES

Clause

1—Short title.

2—Interpretation.

3—Object and purpose of the Act.

4—Allocation to national and county governments.

5—Variation in revenue.

**SCHEDULE— ALLOCATION OF REVENUE RAISED NATIONALLY TO THE
NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2019/20**

SCHEDULE (s.4)

ALLOCATION OF REVENUE RAISED NATIONALLY AMONG THE NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2019/20

Type/Level of Allocation	Amount in Ksh.	Percentage (%) of 2014/15 audited and approved Revenue i.e. Ksh.1,038,035 Millions
A. National Government	1,554,916,497,191	
Of which:		
1. <i>Leasing of Medical Equipment</i>	6,200,000,000	
2. <i>Compensation for user fees forgone</i>	900,000,000	
3. <i>Level 5 hospitals</i>	4,326,000,000	
4. <i>Supplement for construction of county headquarters</i>	485,152,184	
5. <i>Rehabilitation of Youth Polytechnics</i>	2,000,000,000	
B. Equalization Fund	5,760,000,000	0.60%
C. County equitable share	316,500,000,000	30.49%
D. Total shareable revenue	1,877,176,497,191	
Memo items		
1. County equitable share	316,500,000,000	
2. Additional conditional allocations(National Government share of Revenue) of which;	13,911,152,184	
2.1. <i>Leasing of Medical Equipment</i>	6,200,000,000	
2.2. <i>Compensation For User Fees Forgone</i>	900,000,000	
2.3. <i>Level 5 Hospitals</i>	4,326,000,000	
2.4. <i>Supplement For Construction Of County Headquarters</i>	485,152,184	
2.5. <i>Rehabilitation of Youth Polytechnics</i>	2,000,000,000	
3. Allocation from Fuel Levy Fund (15%)	8,984,062,500	
4. Conditional allocations (Loans & grants) of which:	39,089,877,210	
4.1. <i>IDA-Kenya Devolution Support Program (KDSP) Level 1</i>	1,410,000,000	
4.2. <i>IDA-Kenya Devolution Support Program (KDSP) (Level 2 Grant)</i>	4,890,000,000	
4.3. <i>IDA-Transforming Health Systems for Universal Care Project</i>	2,994,247,736	
4.4. <i>DANIDA-Universal Healthcare For Devolved System Program</i>	986,583,544	
4.5. <i>IDA-National Agriculture & Rural Inclusive Growth Project (NARIGP)</i>	7,232,719,940	
4.6. <i>EU-Instruments for Devolution Advice and Support (IDEAS)</i>	492,698,583	
4.7. <i>IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)</i>	3,643,298,670	

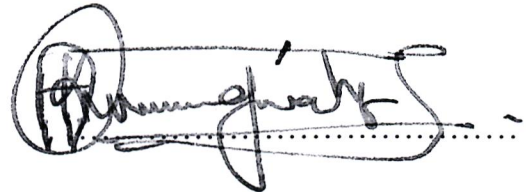
Type/Level of Allocation	Amount in Ksh.	Percentage (%) of 2014/15 audited and approved Revenue i.e. Ksh.1,038,035 Millions
4.8 World Bank- Kenya Urban Support Program(KUSP)- UDG	11,464,702,500	
4.9 World Bank- Kenya Urban Support Program(KUSP)- UIG	396,000,000	
4.10 IDA- Water and Sanitation Development Project (WSDP)	3,500,000,000	
4.11 Sweden Agriculture Sector Development Programme II (ASDP II)	849,626,237	
4.12 EU- Water Tower Protection and Climate Change Mitigation and Adaptation Programme (WaTER)	880,000,000	
4.13 Drought Resilience Programme in Northern Kenya	350,000,000	
Total County Allocations= (1+2+3+4)	378,485,091,894	36.46%

**The National Government share includes Ksh. 4,300 million which is a special grant to the National Health Insurance Fund (NHIF) for free Maternal health care, to be disbursed as a reimbursement to county governments.*

Dated the 11/09....., 2019.

Co-chairs of the Committee

1. **Hon. Kimani Ichung'wah, CBS, MP**



2. **Sen. (Eng.) Mohamed M. Mahamud, CBS, MP**