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REPUBLIC OF KENYA



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ELEVENTH PARLIAMENT – THIRD SESSION



**THE DIVISION OF REVENUE BILL, 2015,
MEDIATION COMMITTEE REPORT IN ACCORDANCE TO
ARTICLE 113 OF THE CONSTITUTION**

**JOINT CLERKS CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI.
MAY 2015**

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PREAMBLE

1. The Mediation Committee on the Division of Revenue Bill, 2015 was constituted by the Speakers of the two Houses of Parliament on 28th April, 2015 pursuant to Article 112 and 113 of the Constitution and the Standing Orders of the Senate and the National Assembly comprising of the following members:-

1. The Hon. Mutava Musyimi, MP. - **Chairperson**
2. The Hon. Sen. Mutahi Kagwe, EGH, MP. - **Vice-Chairperson**
3. The Hon. Mary Emaase, MP
4. The Hon. Beatrice Elachi, CBS, MP.
5. The Hon. Sen. Boni Khalwale, MP.
6. The Hon. Tom Joseph Kajwang, MP.

1.1 The Mediation Committee's Mandate

2. The Mediation Committee derives its mandate from the provisions of Articles 112 and 113 of the Constitution, Standing Order 149 of the National Assembly and Standing Order 154 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.*

1.2 Committee Meetings and Methodology

3. The Committee held a total of five (5) sittings to deliberate on the Division of Revenue Bill, 2015 in accordance with the Constitution and relevant provisions of the Standing Orders of the Senate and the National Assembly.

4. During the first sitting the Committee conducted the election of the Chairperson and the Vice-Chairperson where Hon. Mutava Musyimi, MP and Sen. Mutahi Kagwe, MP were elected as Chairman and Vice Chairman respectively.
5. The Committee commenced its work by holding a meeting with the Principal Secretary, National Treasury who gave the Committee a brief summary on the Division of Revenue Bill, 2015 highlighting key issues requiring the Committee's consideration.
6. The Committee then proceeded by developing a statement of issues of concern raised by the Senate that had necessitated amendment of the Division of Revenue Bill, 2015 followed by an examination of concerns raised by the National Assembly that had led to a rejection of the Senate amendments.
7. The Committee held substantive discussions on the various options available to the Committee and the impact of any decisions they would take.
8. Following lengthy consultations and with each House putting forward its position on the Division of Revenue Bill, the Committee agreed to a version of the Bill for consideration by both Houses. A version of the agreed Bill is appended to this report.

1.3 Acknowledgements

9. The Chairperson, on behalf of the Committee, wishes to sincerely thank the Offices of the Speakers and the Clerks of the two Houses of Parliament for necessary support extended to it in the execution of its mandate.
10. The Chairperson also thanks all Members of the Committee for their patience, sacrifice, endurance and commitment to their assignment under


tight schedules, which enabled the Committee to complete the task within the stipulated period of time.

11. Finally, it is now my pleasant duty and privilege, on behalf of the Mediation Committee on the Division of Revenue Bill, 2015, to present and commend this report including and agreed version of the Bill to the Houses for approval pursuant to Article 113(2) of the Constitution and Standing Order 155(3) of the Senate and Standing Order 150(3) of the National Assembly.

SIGNED 

HON. MUTAVA MUSYIMI, MP
CHAIRPERSON,
(THE MEDIATION COMMITTEE)

DATE: 27.5.15

SIGNED 

SEN. MUTAHI KAGWE, MP
VICE - CHAIRPERSON,
(THE MEDIATION COMMITTEE)

DATE:

1.0 INTRODUCTION

1. Article 218 of the Constitution provides for the introduction in Parliament of Division of Revenue Bill, at least two months before the end of each financial year. The Annual Division of Revenue Bill divides revenue raised by the national government among the national and county levels of government in accordance with the Constitution. Section, 25 of the Public Finance Management (PFM) Act, 2012 requires the National Treasury to submit to Parliament the Budget Policy Statement (BPS). The Budget Policy statement sets out the broad strategic priorities and policy goals that will guide the national government and county governments in preparing their budgets both for the following financial year and over the medium term. Pursuant to these provisions, the National Treasury submitted the BPS to both Houses of Parliament for approval with or without amendments.

2. The two Houses of parliament approved the BPS as the basis for the Division of Revenue Bill. The baseline of the equitable Revenue sharing of financial year 2015/16 was based on the previous allocations between the two levels of government. Over and above the FY 2014/15 allocations, the following items were taken into account in preparing the initial Division of Revenue Bill, 2015, as additional funds availed in computing the 2015/16 equitable share of revenue to counties:
 - i.) Allocation for Personnel Emoluments for staff transferred to County Governments from the State Department of Livestock Development amounting to Kshs. 1,466 million;
 - ii.) Allocation of Kshs .935 million for village polytechnics previously under the Ministry of Education; and
 - iii.) Allocation of Kshs. 545 million for functions transferred to County Governments vide TA gazette notice of March 2014.

3. Based on the aforementioned allocations, the new baseline figure stood at Kshs. 229.606 billion. The figure was then adjusted by revenue growth rate of 10.41 percent (translating to an additional Kshs 23.9 billion). The new figure of Kshs 253.506 billion was adjusted to cater for the salary and allowances for state Officers awarded by the Salaries and Remuneration (SRC) amounting

Kshs. 4.5 billion. Arising from the above computation, the sharable revenue stood at KShs. 258.008 billion.

4. In addition to the allocations shared equitably using the formula, the initial Division of Revenue Bill, 2015, made the following additional allocations as conditional transfers to the County governments:
 - i.) Free maternal healthcare – Kshs. 4.298 billion;
 - ii.) Leasing of medical equipment – Kshs. 4.5 billion;
 - iii.) Allocation for level 5 hospitals – Kshs. 2.06448 billion;
 - iv.) Compensation for forgone user fees (health) – Kshs. 900 million;
 - v.) Allocation from the Road Maintenance fuel levy fund (15 per cent) – Kshs. 3.3 billion; and
 - vi.) Conditional Allocations (loans and grants) Kshs. 10,671,205,204

5. In total, the total allocations to county governments (conditional and unconditional) amounted to Kshs. 283.741 billion equivalent to 37% based on most recent audited revenue approved by Parliament for financial year 2012/13.

2.0 CONSIDERATION OF THE DIVISIONS OF REVENUE BILL, 2015

2.1 Consideration by the National Assembly

6. The Division of Revenue Bill marks the second step in the processing of budget process for the ensuing financial year particularly for the County governments pursuant to Article 224 of the Constitution. This is after taking into account House resolutions of both Houses of Parliament on the BPS and adoption of the Reports on BPS. This year's Division of Revenue Bill, 2015, was published on 18th March 2015 as the National Assembly Bill, No. 11 of 2015. The Bill was referred to the Budget and Appropriations Committee on 19th March 2015. The Committee considered and deliberated on the Bill and subsequently tabled its Report on the Division of revenue Bill, 2015, on 24th March 2015.

7. The Budget and Appropriations Committee Report on the Division of Revenue Bill, 2015 and the Bill itself was adopted by the House on 25th March 2015 without amendments. In line with the provisions of the National Assembly Standing Orders 233 (4) and 142 (*Concurrence of the other House*), the Bill was referred to the Senate for concurrence on 30th March 2015.

2.2 Consideration by the Senate on the Division of Revenue Bill, 2015

8. The Division of Revenue Bill, 2015 was submitted to the Senate on 29th March 2015. The Bill was passed by the Senate on 9th April 2015 with the following amendments:
 - i.) Additional allocations to level 5 Hospitals amounting to Kshs 1,536,000,000;
 - ii.) Introduction of new allocations towards county emergencies funds amounting to Kshs 4,400,000,000; and
 - iii.) Increasing allocations towards Salaries, Gratuity and Allowance as awarded by Salaries and Remuneration Commission (SRC) to county executives and county assemblies by Kshs 1,766,500,000.

This will result in a net increment of resources due to counties by **Kshs 7,702,500,000.**

2.3 The Message from the Senate on the Division of Revenue Bill, 2015

9. In accordance with the provisions of Article 110(4) of the Constitution, the National Assembly received a message from the Senate on 14th April 2015 regarding the passage of the Division of revenue Bill, (National Assembly Bill no. 11 of 2015). The message was referred to the Budget and Appropriations Committee to consider the amendments.
10. As a result, the Budget and Appropriations Committee considered the Message from the Senate proposing amendments and tabled its report on 16th April 2015. The Report recommended rejection of the proposed

amendments by the Senate to the Division of Revenue Bill, 2015. The National Assembly adopted the Report and passed it wholesale hence leading to the establishment of the mediation Committee.

2.4 Appointment of the Mediation Committee Members

11. In accordance with Article 113 of the Constitution and Standing Order 149 of the National Assembly, the Speaker of the National Assembly wrote to the Speaker of the Senate vide letter dated 27th April, 2015 notifying him of the Members appointed to represent the National Assembly in the Mediation Committee on the Division of Revenue Bill, 2015. The National Assembly appointed the following members to the Mediation Committee; Hon. Mutava Musyimi, M.P., Hon. Tom Joseph Kajwang, M.P. and Hon. Mary Emaase, M.P.

12. On the other hand, the Speaker of the Senate vide a letter dated 28th April, 2015 wrote to the Speaker of the National Assembly communication appointment of Sen. Mutahi Kagwe, MP, Sen. Beatrice Elachi, M.P. and Sen. (Dr) Boni Khalwale M.P. to represent the Senate in the Mediation Committee in accordance to Article 113 of the Constitution.

13. The Mediation Committee Commenced business and held its first meeting on 29th April 2015. It appointed its Chairperson and vice chairperson as Hon. Mutava Musyimi and Sen. Mutahi Kagwe respectively.

3.0 CONSIDERATION BY THE MEDIATION COMMITTEE

14. The issues of concern raised by the National Assembly bordered on Senate's proposed amendments to the Bill;

- i.) The Senate proposed to vary allocations between the two levels of government by reducing the National Government share by Kshs 1,766,500,000 from Kshs 978,692,000,000 to Kshs 976,925,500,000 and increasing the County shareable revenue by a similar amount of Kshs 1,766,500,000. In essence, the equitable share of resources going to counties would increase from Kshs. 258,008,000,000 as*

currently provided in the Bill, to a new figure of Kshs. 259,774,500,000.

ii.) The following conditional allocations

a) The Senate proposal to increase the conditional allocations to the Level 5 Hospitals by additional Kshs 1,536,000,000 bringing the total allocation for Level 5 Hospitals to Kshs 3,600,480,000 from the initial allocation of Kshs 2,064,480,000.

b) The Senate proposed introduction of a new item to cater for County Emergency Funds amounting to Kshs 4,400,000,000. This amount was not provided for in the initial Division of Revenue Bill, 2015.

iii.) Lastly, the sources of financing the proposed additional expenditures amounting to Kshs 7,702,500,000 above the agreed fiscal framework.

4.0 COMMITTEE OBSERVATIONS

15. The Committee observes that this is the second Mediation Committee on matters Division of Revenue Bill since the promulgation of the Constitution and it will be prudent not to allow a Constitutional challenge and/ or a crisis by negating the Bill since such an action is likely to trigger and affect, among other things, the financial operations of the country. The Committee further observed that there is need for immense goodwill on the matter, hence the responsibility of Parliament in prosecuting this agenda.

16. The Committee notes that, as per the mandate in Article 96(3) of the Constitution, the Senate can also reallocate resources to counties including the money for the level five hospitals. Further, the Committee observes that, funds previously allocated to these hospitals were insufficient hence adversely affecting the operations of these critical hospitals that serve beyond the respective domicile/ host counties.

17. The Committee observes that the report on Budget Policy Statement (BPS) 2015 was adopted by both Houses which consequently provided the basis for the preparation of the Division of Revenue Bill, 2015 considering that the recommendations supported the decisions of both Houses.
18. In addition, respective County Executive Committee Member for Finance should create a fund to cater for county emergencies to address such challenges that are contingent in nature as provided in the PFM Act, 2012. However, the seed funds for financing mechanism through legal framework could be considered and set up appropriately according to Section 110 of the PFM Act, 2012.
19. The Committee additionally acknowledges that a lawful and comprehensive process guided the consultations on the Division of Revenue Bill 2015, with key stakeholders among them; the National Treasury, the Controller of Budget, The Commission on Revenue Allocation (CRA), Intergovernmental Budget and Economic Council (IBEC) and Council of Governors and the DORB was a negotiated instrument through various institutions established by law.
20. The Committee unanimously observed that with respect to institutional development and capacity which is currently being addressed, funds given to counties should therefore be increased progressively with time and the additional funds as proposed in the amendment should be reallocations within the shareable revenue allocated to the county governments.
21. The Committee observes most importantly, that 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. Thus there is need to consider the risks involved on the part of the National Government in case of a shortfall in revenue collection against estimated revenue forecasts.

22. The Committee recognizes that the cost burden of salaries and allowances as awarded by Salaries and Remuneration Commission (SRC) should proportionately be shared by the respective level of government.

Briefing by the Parliamentary Budget Office

23. The Parliamentary Budget Office briefed the Committee and noted on the following areas of concern

- a) The legislative framework for the preparation and processing of Division of Revenue (DORB, 2015);
- b) Implications of the DORB to the National and County Budget Process;
- c) Historical perspective in the processing of DORB
- d) The current budget process up to the critical stages of approving key budget documents like Budget Policy Statement and subsequent enactment of key Bills such as the Division of Revenue and County Allocation of Revenue Bill.

24. The Committee considered the options available to the Committee as follows;

- i.) Allow the deadlock to continue, the talk collapses and the bill is defeated – the do nothing principle
- ii.) Accepting the option tendered by the Senate and find the Kshs 7.7 billion from the national share of resources.
- iii.) Revert to the original Bill approved by the National Assembly and the Senate reallocates the funds within the county allocations availed as county shareable allocations.
- iv.) Preparing a new Bill dropping the request for County Emergency Fund and incorporating the requested allocations for
 - a) Shareable revenue Kshs 1,767 million
 - b) Allocation for Level 5 Hospitals – Kshs 1,536 billion.This will result in a net increment of resources due to counties by Kshs. 3,3025 million.
- v.) Of the option (iv) above, consider allocations for Level 5 Hospitals only amounting to Kshs 1,536 billion. This will result in a net

increment of resources due to counties as Conditional transfers by Kshs. 1,536 billion.

5.0 RECOMMENDATIONS

25. The Mediation Committee therefore recommends that;

i.) **A new Bill be prepared incorporating the following changes:**

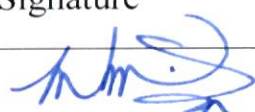
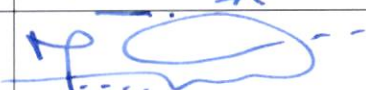



a. **Deletion of the allocation of emergency funds as it contravenes section 110 of the PFM Act, 2012 which provides that each emergency fund shall be set up by the County Executive Committee of Finance with the approval of the respective county assembly.**

b. **Provide the requested allocation for**

i. **Shareable revenue – Ksh. 1.767 billion**

ii. **Allocation for level 5 hospitals – Ksh. 1.536 Billion**

ii.) **The two Houses of Parliament approve this report of the Mediation Committee on the Division of Revenue Bill, 2015 and the appendix thereof.**

	Name	Signature
1.	Hon. Mutava Musyimi MP- Chairman	
2.	Hon. Sen. Mutahi Kagwe, EGH, MP - Vice Chairman	
3.	Hon. Mary Emaase, MP.	
4.	Hon. Sen. Beatrice Elachi MP.	
5.	Hon. Sen. Boni Khalwale MP.	
6.	Hon. Tom Joseph Kajwang MP.	

-----*End*-----

**MINUTES OF THE 5TH SITTING OF THE MEDIATION COMMITTEE
ON THE DIVISION OF REVENUE BILL, 2015 HELD IN THE
BOARDROOM, GROUND FLOOR, COUNTY HALL, PARLIAMENT
BUILDINGS, ON TUESDAY, 26TH MAY, 2015 AT 10.30 AM.**

Present

1. The Hon. Mutava Musyimi, MP - **Chairman**
2. The Hon. Sen. Mutahi Kagwe, EGH, MP. - **Vice Chairman**
3. The Hon. Mary Emaase, MP.
4. The Hon. Sen. Boni Khalwale, MP.
1. The Hon. Tom Joseph Kajwang, MP.
2. The Hon. Sen. Beatrice Elachi, CBS, MP.

In Attendance

Secretariat

1. Mr. Johnson Okello – Deputy Director , Legal
2. Mr. Fredrick Muthengi - Principal Fiscal Analyst
3. Ms. Emma Essendi - Legal Counsel II
4. Mr. Abdirahman Gorod - Fiscal Analyst III
5. Mr. Vitalis Ndambuki - Office Assistant
6. Mr. Philip Kalasha - Pupillage , Legal Department
7. Mr. Timothy

Agenda

- 1). Preliminaries
- 2). Adoption of the Agenda
- 3). Confirmation of the previous minutes
- 4). Matters arising**
- 5). Consideration and discussions on the Division of Revenue Bill, 2015**
- 6). Any other Business

Min. No. 22/2015: Preliminaries

The Committee meeting commenced at 12.30 PM. Prayers were led by Sen. Mutahi Kagwe followed by a short introduction of those present.

Min. No. 23 /2015: Adoption of the Agenda

The agenda was adopted by the Committee having been proposed by Sen. Boni Khalwale, MP. and seconded by Hon. Mary Emaase, MP

Min. No. 24/2014: Confirmation of the Minutes of the previous sitting

The minutes of the 4th Sitting were proposed by Sen. Mutahi Kagwe and seconded by Hon. Joseph Kajwang. Having been confirmed as true record of the sittings proceedings, the minutes were then signed by the Chairperson.

Min. No. 25/2015: Consideration and discussions on the Division of Revenue Bill, 2015

Following the consideration and deliberations of the various options available to the Committee, the Committee resolved to take a vote on two options as follows:

- 1). That the Mediation committee adopts the proposal providing for marinating the original Bill approved by the National Assembly with a requirement that the Senate reallocate within the estimates provided for county government allocation.
- 2). That the Mediation Committee adopts the proposal of providing a net increment of Kshs. 3.3025 billion of which Kshs. 1.767 billion is towards shareable revenue and Kshs. 1.536 billion is towards an increment for level 5 hospitals. This option deletes the allocation of Kshs. 4.4 billion towards county emergency funds.

Members of the Committee having looked at the two proposals opted to take an individual member vote to pronounce themselves on either option.

The Committee voted 4 to 2 votes in favour of proposal number 2 being a **net increment of Kshs. 3.3025 billion of which Kshs. 1.767 billion is towards shareable revenue and Kshs. 1.536 billion is towards an increment for level 5 hospitals.**

The following members voted in favour of the proposal:

1. The Hon. Sen. Mutahi Kagwe, EGH, MP. -**Vice Chairman**
2. The Hon. Sen. Boni Khalwale, MP.
3. The Hon. Tom Joseph Kajwang, MP.
4. The Hon. Sen. Beatrice Elachi, MP.

The following members voted against the proposal:

1. The Hon. Mutava Musyimi, MP - **Chairman**
2. The Hon. Mary Emaase, MP.

The Committee following on the vote adopted the report of the Mediation Committee for tabling in the respective Houses.

Min. No.26/2015: Adjournment

There being no other business, the meeting was adjourned at 1.00 p.m.

SIGNED: 

CHAIRPERSON- HON. MUTAVA MUSYMI, M.P

**MINUTES OF THE 4TH SITTING OF THE MEDIATION COMMITTEE
ON THE DIVISION OF REVENUE BILL, 2015 HELD IN THE
BOARDROOM, GROUND FLOOR, COUNTY HALL, PARLIAMENT
BUILDINGS, ON TUESDAY, 26TH MAY, 2015 AT 10.30 AM.**

Present

1. The Hon. Mutava Musyimi, MP - **Chairman**
2. The Hon. Sen. Mutahi Kagwe, EGH, MP. - **Vice Chairman**
3. The Hon. Mary Emaase, MP.
4. The Hon. Sen. Boni Khalwale, MP.
5. The Hon. Tom Joseph Kajwang, MP.

Apologies

1. The Hon. Sen. Beatrice Elachi, CBS, MP.

In Attendance

Secretariat

1. Mr. Fredrick Muthengi - Principal Fiscal Analyst
2. Ms. Brenda Ogembo - Clerk Assistant I
3. Ms. Emma Essendi - Legal Counsel II
4. Ms. Lucy Radoli - Legal Counsel III
5. Mr. Chelanga Maiyo - Research officer III
6. Mr. Victor Bett - Clerk Assistant III
7. Ms. Rehema Chepkirui - Audio Officer
8. Mr. Abdirahman Gorod - Fiscal Analyst III
9. Mr. Vitalis Ndambuki - Office Assistant
10. Mr. Philip Kalasha - Pupillage , Legal Department

In Attendance

- Mrs. Phyllis Makau - Director, Parliamentary Budget Office
- Mr. Martin Masinde - Senior Deputy Director, Parliamentary Budget office
- Mr. Gichohi Mwaniki - Senior Fiscal Analyst, Parliamentary Budget office

In Attendance

Mr. Albert Mwenda - Advisor, Inter-Governmental Relations, National Treasury

Mr. Geoffrey Malombe - Head, Inter-Fiscal Division, National Treasury

Agenda

- 1). Preliminaries
- 2). Adoption of the Agenda
- 3). Confirmation of the previous minutes
- 4). Matters arising**
- 5). Agendas:**
 - a) Brief by the Parliamentary Budget Office and National Treasury on the Division of Revenue Bill,2015**
 - b) Consideration and discussions on the Division of Revenue Bill, 2015**
- 6). Any other Business

Min. No. 17/2015: Preliminaries

The Committee meeting commenced at 10.55a.m. Prayers were led by Hon. Mutava Musyimi followed by a short introduction of those present.

Min. No. 18 /2015: Adoption of the Agenda

The agenda was adopted by the Committee having been proposed by Hon. Mary Emaase, MP. and seconded by Sen. Boni Khalwale, MP.

Min. No. 19/2014: Confirmation of the Minutes of the previous sitting

The minutes of the 3rd Sitting were proposed by Hon. Joseph Kajwang and seconded by Sen. Mutahi Kagwe. Having been confirmed as true record of the sittings proceedings, the minutes were then signed by the Chairperson.

Min. No. 20/2015: Brief by the Parliamentary Budget Office and National Treasury on the Division of Revenue Bill,2015

Following the Committee's decision to invite the Parliamentary Budget Office and National Treasury to provide more information and clarity on specific areas of concern to the Committee, the Members were of the view to listen to the briefs and submissions by the respective invited parties

a) Brief by the Parliamentary Budget Office to the Mediation Committee on the Division of Revenue Bill, 2015

The Director, Parliamentary Budget Office gave a detailed brief to the Committee on the Division of Revenue Bill, 2015, as committed to the Mediation Committee and further expounded on issues that were of concern to the Committee. The issues responded to by the Director included the absorption capacity of voted funds at both levels of government, allocations to the health and agriculture sub sectors and other fiscal and policy measures relating to budget legislation, performance and reviews, mostly on the FY 2013/14, as well as emerging issues that require both immediate and long-term legislative interventions and other solutions.

The Director's Brief and Submissions covered, among other things, the legislative framework for the preparation and processing of Division of Revenue (DoRB, 2015); implications of the DoRB to the National and County Budget Process; historical perspective in the processing of DoRB as well as the current budget process up to the critical stages of approving key budget documents like Budget Policy Statement and subsequent enactment of key Bills like Division of Revenue and County Allocation of Revenue Bill.

The Brief also highlighted on the legal basis of processing the Division of Revenue Bill,2015, the status of the Bill as currently before the Committee and resource contention on account of how the national revenue will be shared

between the National and County Government where members have expressed divergent opinion.

The brief ended with a way forward where Members were presented with four different options as follows:

(a) Option 1

Allow the deadlock to continue, the talks collapse and the Bill is consequently defeated. This is the “do nothing principle” which will result in:

- 1) The counties not being able to approve any budgets
- 2) Lack of or delayed service delivery at the county level of government in particular
- 3) The National Legislature exposing itself to litigation and court injunctions which may jeopardise the national as well as the county budget process.
- 4) Possibility of recall clauses and petitions on individual members
- 5) Possibility of a lack of confidence in the government of the day

(b) Option 2

Accepting the option tendered by the Senate and find the Kshs 7.7 billion from the national share of resources.

(c) Option 3

Revert to the original Bill approved by the National Assembly

(d) Option 4

Prepare and agree to a new bill that incorporates the following changes:

- a. Deletion of the allocation of emergency funds as it contravenes section 110 of the PFM Act, 2012 which provides that each emergency fund shall be set up by the County Executive Committee of Finance with the approval of the respective county assembly.
- b. Provide the requested allocation for
 - i. Shareable revenue – Ksh. 1.767 billion
 - ii. Allocation for level 5 hospitals – Ksh. 1.536 Billion

This will result in a net increment of resources due to counties Kshs. 3,3025 million.

The Committee on deliberating the options provided included a fifth option as follows:

(e) Option 5

The county governments to reallocate the funds within the county allocations availed as county shareable allocations.

Submissions by the National Treasury to the Mediation Committee on the Division of Revenue Bill, 2015

Based on the concerns and the clarification sought by the members, National Treasury submitted both oral and written submissions on the same. The National Treasury presented on the absorption capacity of various ministries, agencies and departments including Commissions and the performance of the budget for the fiscal year 2013/14. The National Treasury also provided information on the allocations to Health Ministry for the FY 2014/15 and in the proposed Estimates of FY 2015/16.

The National Treasury also provided further clarification on the allocation to fertilizer and seed fund under the Ministry of Agriculture whereby out of the

current allocation of kshs 3 billion for the FY 2014/15, kshs 1.994 billion were total payment and commitment so far.

On allocation to irrigation through the National Irrigation Boards, the members were informed that out of total allocation of kshs 10.9 billion in the FY 2014/15, Kshs 9.56 billion were total payment and commitments, where the exchequer component of the allocation was fully released.

Based on the clarifications sought, the members were also informed that an increment of kshs 1.5 billion or additional expenditure to fund Level 5 hospitals would not lead to a government shut down or affect immediate government operations, however it would in the long run have an inter-temporal effect on the macro-fiscal framework later in terms of ability of government to absorb such additional requests.

Finally, the National Treasury submitted that the government is seriously underfunded and revenue projections maybe revised in light of the Kenya Revenue Authority not been able to meet collection targets

The submissions as provided are annexed to the minutes

Min. No. 21/2015: Matters Arising

Based on the briefs and the submissions, members deliberated further on the information provided including the various options contained therein.

Members of the Committee expressed their views and proposed the following options:

- (a) A Member of the Committee proposed that the additional allocations of Ksh. 1.767 billion proposed under the shareable revenue be dropped and that of Level 5 hospitals amounting to Ksh. 1.536 billion be retained.

(b) A Member of the Committee proposed that the Committee reverts to the original Bill approved by the National Assembly while simultaneously reallocating within the ceilings already provided.

(c) Some Members of the Committee proposed that a new Bill be prepared providing that the allocation towards emergency funds be deleted, and a total amount of Ksh. 3.3025 billion net increment of additional resources be added to the counties in the following manner:

- i. Shareable revenue of Kshs. 1.767 billion
- ii. Allocation for Level 5 hospitals of Kshs. 1.536 billion.

The Committee then resolved to meet their respective Committees with a view to enrich further discussions and decisions on which options to consider. The Committee resolved to have another meeting the following day to make a decision on the outstanding issues.

Min. No.22/2015: Adjournment

There being no other business, the meeting was adjourned at 3.32 p.m. The next sitting will be held on Wednesday 27th May, 2015 at 12.00PM in the Board Room, Ground Floor, County Hall.

SIGNED:


CHAIRPERSON- HON. MUTAVA MUSYMI, M.P

DATE: 27.5.15

MINUTES OF THE 3RD SITTING OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE BILL, 2015 HELD IN THE BOARDROOM, GROUND FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS, ON MONDAY, 18TH MAY, 2015 AT 2.30 PM.

Present

1. The Hon. Mutava Musyimi, MP - **Chairman**
2. The Hon. Sen. Mutahi Kagwe, EGH, MP. - **Vice Chairman**
3. The Hon. Mary Emaase, MP.
4. The Hon. Sen. Beatrice Elachi, MP.
5. The Hon. Sen. Boni Khalwale, MP.
6. The Hon. Tom Joseph Kajwang, MP.

Secretariat

1. Mr. Frederick Muthengi - Principal Fiscal Analyst
2. Mr. Dennis Abisai - Principal Legal Counsel
3. Ms. Rose Omutere - Audio Officer I
4. Ms. Emma Essendi - Legal Counsel II
5. Ms. Lucy Radoli - Legal Counsel III
6. Mr. Chelanga Maiyo - Research officer III
7. Ms. Julie Mwithiga - Fiscal Analyst III
8. Mr. Victor Bett - Clerk Assistant III
9. Mr. Abdirahman Gorod - Fiscal Analyst III
10. Mr. Vitalis Ndambuki - Office Assistant

Agenda

- 1). Preliminaries
- 2). Adoption of the Agenda
- 3). Confirmation of the previous minutes
- 4). Matters arising
- 5). Consideration and Discussions on the Division of Revenue Bill, 2015**
- 6). Any other Business

Min. No. 12/2015: Preliminaries

The Committee meeting commenced at 2.45p.m. Prayers were led by Hon. Mutava Musyimi followed by a short introduction of those present.

Min. No. 13 /2015: Adoption of the Agenda

The agenda was adopted by the Committee having been proposed by Hon. Mary Emaase, MP. and seconded by Sen. Mutahi Kagwe, MP.

Min. No. 14/2014: Confirmation of the Minutes of the previous sitting

The minutes of the 1st Sitting were proposed by Sen. Boni Khalwale and seconded by Hon. Mary Emaase while that of the 2nd Sitting were proposed by

Sen. Beatrice Elachi and seconded by Joseph Kajwang. Having been confirmed as true records of the sittings proceedings, the minutes were then signed by the Chairperson.

Min. No. 15/2015: Mediation on the Division of Revenue Bill 2015

The Committee noted that all the three issues were still outstanding.

Based on the deliberations, the Committee observed and noted the contributions of the Members, and discussed as follows:

1. That this is the second Mediation Committee on matters division of revenue since the promulgation of the Constitution and it will be prudent not to allow a constitutional challenge and/ or a crisis by negating the Bill since such an action is likely to trigger and affect, among other things, the financial operations of the country. The Committee further observed that there is need for immense goodwill on the matter, hence the responsibility of parliament in prosecuting this agenda.
2. That the proposal by Senate's position of maintaining Kshs. 5 billion instead of the Kshs. 7.7 billion be the basis for finding amicable agreement and way forward. This was informed by the fact that the absorption capacity of voted funds for the last three years were below target, more so on allocations towards irrigation where utilization levels were below 50 percent. In addition, although there are resources at both levels of government, interventions and responses by the counties are immediate and quick.
3. It was noted that there was need to subject information on allocative and absorptive capacities of both levels of government and their agencies to the Committee by the technicians to facilitate a structured consultations so as to provide a basis and guide the Committee's decisions.
4. It was suggested that in light of the inadequacy of revenue, Counties can also reallocate within their budget provisions to accommodate priority needs since a reallocation to accommodate additional request may not be fair to the National Government. This is also in view of the current allocation to counties which reflects an enhanced allocation when compared to the provisions in the current FY 2014/15. In addition, the consensus of Council of Governors and National Government at the IBEC level together with other key stakeholders was also based on the limited nature of the available resources.
5. The Committee was informed that the scrutiny and review of the itemized budget for FY 2015/16 was underway and the request for considerations from ministries, agencies and commissions are still enormous. That this

obtaining situation is an indicator that the National Government is seriously underfunded and recognizing that the Constitution has placed a lot of burden on the National Assembly when it comes to the processing of the national budget.

6. The Committee noted that resource allocations must be need based and due regard to financing of respective functions be taken into account. In addition, there was need to also reflect on the fact that some resources collected at the county levels are also transmitted to the National Government.
7. The Committee was informed that the funding request for the counties in the areas of health, emergencies and salary awards are measures to complement underfunded mandate and are geared towards mitigating the effect of arising shortfall considering that some counties are already faced with deficits, for instance financing critical areas like the health sector. In that regard, the committee was informed that the national government is better placed and more empowered to mobilize additional resources including external funding to bridge fiscal shortfalls in the national budget as compared to the counties.
8. The Committee observed that the main assumption or premise is that all the stakeholders involved in the making of the Division of Revenue Bill, 2015 had already taken into account these issues and any movement of resources may require clear view of the effect of such proposal on each respective budget and the various votes.

Min. No. 15/2015: Matters Arising

Based on the deliberations and the need to crystalize the import of additional request and subsequent decisions of the Committee from a technical point of view, the committee resolved that the Parliamentary Budget Office and the National Treasury be invited and give further clarity on the issues before the committee. The clarification should be based around the following issues where the committee will then make a decision:

- ❖ The absorption capacity of both levels of government and reasons for underutilization. The need for more information on why the funds have not been absorbed at both levels
- ❖ Highlights on the policy measures aimed at creating the new Ministry of Water and Irrigation and its implication on the budget going forward.

- ❖ The implications of the current status of the Division of Revenue Bill, 2015 on the budget process, including the possibility of a disagreement on the same.
- ❖ Allocation to health and agriculture sectors which are devolved functions and where both levels of government implement.

Min. No.16/2015: Adjournment

There being no other business, the meeting was adjourned at 4.45 p.m. The next sitting will be held on Tuesday 26th May, 2015 at 10.00 a.m. in the Board Room, Ground Floor, County Hall.

SIGNED: .....
CHAIRPERSON- HON. MUTAVA MUSYIMI, M.P

DATE: 27.5.15.....

MINUTES OF THE 2ND SITTING OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE BILL, 2015 HELD IN THE BOARDROOM, GROUND FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS, ON THURSDAY, 30TH APRIL, 2015 AT 8.30 AM.

Present

- | | |
|--|-----------------|
| 1. The Hon. Mutava Musyimi, MP | - Chairman |
| 2. The Hon. Sen. Mutahi Kagwe, EGH, MP. | - Vice Chairman |
| 3. The Hon. Mary Emaase, MP. | |
| 4. The Hon. Joseph Kajwang, MP. | |
| 5. The Hon. Sen. Beatrice Erachi, EGH, MP. | |
| 6. The Hon. Sen. Boni Khalwale, MP. | |

In Attendance

Secretariat

- | | |
|--------------------------|----------------------------|
| 1. Mr. Martin Masinde | - Senior Deputy Director |
| 2. Mr. Fredrick Muthengi | - Principal Fiscal Analyst |
| 3. Mr. Dennis Abisai | - Principal Legal Counsel |
| 4. Ms. Brenda A. Ogembo | - First Clerk Assistant |
| 5. Mr. John Ng'an'ga | - Audio Officer I |
| 6. Ms. Emma Essendi | - Legal Counsel II |
| 7. Mr. Chelanga Maiyo | - Research officer III |
| 8. Ms. Julie Mwithiga | - Fiscal Analyst III |
| 9. Mr. Abdirahman Gorod | - Fiscal Analyst III |
| 10. Ms. Lucy Mwaniki | - Sergeant at Arms |
| 11. Mr. Vitalis Ndambuki | - Office Assistant |
| 12. Ms. Ann Wanjiru | - Intern |

AGENDA

1. Preliminaries
2. Adoption of the Agenda
3. Confirmation of the Previous Minutes
- 4. Matters Arising**
- 5. Consideration and Discussions on the Division of Revenue Bill, 2015**
6. Any Other Business

Min. No. 7/2015: Preliminaries

The Mediation Committee meeting commenced at 8.35 a.m. Prayers were led by Hon. Mutava Musyimi.

Min. No. 8/2015: Confirmation of the Minutes

The Committee perused the minutes of the previous meeting held on 29th April 2015. However, the Committee agreed to defer confirmation of the minutes till the next forthcoming meeting.

Min. No. 9/2015: Discussion of the Mediation Committee on the Division of Revenue Bill, 2015

The following were the issues raised by the National Assembly:

- i. That, as per the mandate in Article 96(3) of the Constitution, the Senate can also reallocate resources to counties including the money for the level five hospitals.
- ii. That, the report on BPS 2015 was adopted by both Houses and consequently provided a basis for the preparation of the Division of Revenue Bill, 2015 considering that the recommendations espoused the decisions of both Houses.
- iii. That, the issue of funding emergencies is progressive and there is no evidence yet that the National Government is unable to deal with emergencies. In addition, respective County Executive Committee Member for Finance should create a fund to cater for county emergencies to address such challenges that are contingent in nature.
- iv. That, a lawful and comprehensive process guided the consultations on the Division of Revenue Bill, with key stakeholders among them; the National Treasury, the Controller of Budget, The Commission on Revenue Allocation (CRA), Intergovernmental Budget and Economic Council (IBEC) and Council of Governors.
- v. That, in light of institutional development and capacity which is currently being addressed, funds given to counties should therefore be increased progressively with time.
- vi. That, instead of additional funds as proposed by the Senate, a reallocation be done within the shareable revenue allocated to the county governments.
- vii. That, there is need to consider the risks involved on the part of the National Government in case of a shortfall in revenue collection against estimated amount.

The following were the issues raised by the Senate:

- i. That, on the issue of the level five hospitals, funds previously allocated to these hospitals were insufficient hence adversely affecting the operations of these critical hospitals that serve beyond the respective host counties.

- ii. That, on the issue of increment of salaries and allowances as awarded by Salaries and Remuneration Commission (SRC), the National Treasury was already aware that SRC had awarded Kshs. 12.6 billion and that the allocations in the Bill should consider at least half of the award, being kshs 6 billion.
- iii. That, Counties should be seen as a focal point of service delivery in the counties and at the same time responsible for the use of devolved resources as stipulated in the Constitution. In that regard there is therefore need to adequately fund devolved functions since presently some of these functions such as health and emergencies are unfunded
- iv. That, there is need to look and further evaluate some of National Government priorities, for example the irrigation and health projects and programmes since counties are also mandated with implementing the same functions.
- v. That, the Senate is of the view that out of the Kshs 7.7 Billion it pronounced itself on, it will maintain the position on the Kshs. 5 Billion reallocated under contingencies and national irrigation with a view to amicably finding a solution to the outstanding issues before the Committee.

National Assembly maintained that the Senate position is not feasible in the circumstances and further suggested that the position as contained in the 2015 BPS where it allocates a total of kshs 283.7 billion to counties (inclusive of conditional allocations) as passed in the National Assembly be maintained.

Based on deliberations and the proposals, the Committee observed and resolved that **there was no agreement on the three outstanding issues.**

The Committee then considered the provisions of the Constitution on the Bill as well as the timelines involved in processing the mediation agenda, and thereafter resolved to adjourn and meet on 18th May 2015.

Min. No. 10/2015: Matters Arising

In view of the unresolved matter, the Committee noted the need for the members to allow the mediation process to continue in the interest of the country since both Houses represent the people of Kenya.

It was further suggested that it would be important to have the next mediation meeting in a different venue outside Nairobi to give members enough time to consult adequately.

Min. No.11/2015: Adjournment

There being no other business, the meeting was adjourned at 10.55 am. The next sitting will be on Monday 18th May, 2015 at 2.30 pm in the board room, ground floor, County Hall.



SIGNED:
CHAIRPERSON- HON. MUTAVA MUSYIMI, M.P

DATE: 27.5.15

MINUTES OF THE 1ST SITTING OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE BILL, 2015 HELD IN THE BOARDROOM, GROUND FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS, ON WEDNESDAY, 29TH APRIL, 2015 AT 12.00 NOON.

Present

1. The Hon. Mutava Musyimi, MP - **Chairman**
2. The Hon. Sen. Mutahi Kagwe, EGH, MP. - **Vice Chairman**
3. The Hon. Mary Emaase, MP.
4. The Hon. Sen. Beatrice Erachi, EGH, MP.
5. The Hon. Sen. Boni Khalwale, MP.
6. The Hon. Tom Joseph Kajwang, MP.

In Attendance

National Treasury

1. Dr. Kamau Thugge - Principal Secretary, National Treasury
2. Mr. Geoffrey Malombe - Head, Inter-fiscal Division National Treasury
3. Mr. Albert Mwenda - Advisor, Inter- Governmental relations.

Secretariat

1. Mr. Fredrick Muthengi - Principal Fiscal Analyst
2. Mr. Dennis Abisai - Principal Legal Counsel
3. Ms. Brenda A. Ogembo - First Clerk Assistant
4. John Nganga - Audio Officer I
5. Ms. Emma Essendi - Legal Counsel II
6. Mr. Chelanga Maiyo - Research officer III
7. Ms. Julie Mwithiga - Fiscal Analyst III,
8. Mr. Abdirahman Gorod - Fiscal Analyst III
9. Mr. Vitalis Ndambuki - Office Assistant
10. Ms. Ann Wanjiru - Intern

AGENDA

1. Preliminaries
2. Adoption of the Agenda
3. Election of the Chairperson and Vice Chairperson
4. Agendas:
 - a) **Consideration and Discussions on the Division of Revenue Bill, 2015**
 - b) **Matters Arising**
5. Any Other Business

Min. No. 1/2015: Preliminaries

The Committee meeting commenced at 12.35 pm. Prayers were said by Sen. Mutahi Kagwe, followed by a short introduction of those present.

Min. No. 2/2015: Adoption of the Agenda

The agenda was adopted by the Committee having been proposed by Hon. Joseph Kajwang, M.P and seconded by Sen. Boni Khalwale. The agenda regarding the Mediation of Division of Revenue Bill, 2015, upon deliberation was adopted by the Committee.

Min. No. 3/2015: Election of the Chairperson and Vice Chairperson.

The mediation started with the election of the Chairperson and the Vice-Chairperson. It was noted that as a matter of precedence, the Committee made reference to the report of the pioneering Mediation Committee that recommended that in future, the Chair of the Mediation Committee should be elected from amongst members of the House that originated the Bill. Pursuant to this precedence, the members unanimously elected Hon. Mutava Musyimi and Sen. Mutahi Kagwe as the Chair and Vice-Chairperson, respectively.

Thereafter, the Chair took the members through the agenda and informed the meeting of the Message on mediation following the rejection of the Senate amendments on the Division of Revenue Bill, 2015 by National Assembly.

Min. No. 4/2015: Discussions of the Mediation Committee on the Division of Revenue Bill 2015

In addressing the matter before the Committee, the Committee agreed to first of all get a background summary of the obtaining issues, with the National Assembly seeking further clarification on the sources of funds for the proposed additional expenditure by the Senate. The issues were listed as follows:

- 1) Allocations to level 5 Hospitals
- 2) Allocations towards county emergencies funds
- 3) Allocations towards Salaries, Gratuity and Allowance as awarded by Salaries and Remuneration Commission (SRC) to county executives and county assemblies

a) The Presentation by the National Treasury on the Division of Revenue Bill, 2015

Thereafter the membership was in agreement to have the National Treasury give background information on the entire budget process for the fiscal year 2015/16 so far, and further highlighting on the key issues as contained in the initial Division of Revenue Bill, 2015.

The Principal Secretary National Treasury, Dr. Kamau Thugge, gave a brief summary on the Division of Revenue Bill, 2015, highlighting the key issues as follows:

- i.) THAT the budget process and the resource sharing was fairly inclusive and consultative as compared to the previous financial year of 2014/15.

However, the Senate was not adequately represented during the negotiations at the Intergovernmental Budget and Economic Council (IBEC) level.

- ii.) THE adjustment for increases in the salaries and allowances as awarded by SRC in 2014/15 totaled to **Kshs. 12 Billion** of which **Kshs. 3 Billion** was taken care of while adjusting for Revenue Growth through the revenue growth factor of 10.41 percent. The remaining **Kshs. 9 Billion** was divided equally between the National and County Governments, with the national government allocating **Kshs. 4.5 Billion** on its part.
- iii.) THAT based on Art. 203(1) of the constitution, the criteria used in determining the equitable share were taking into account with a summary provided in table 2 of the Bill together with an explanatory notes and further explanations on the allocation of **KShs. 2.06 billion** to level 5 hospitals across the country.
- iv.) THAT, **Kshs. 193.591 billion** revenue available to the National Government to fund ministerial expenditure excluding the allocation for Emergencies of Kshs. 7.913 Billion will result to a deficit of **Kshs. 700 Billion**, given that the required resources are approximately **Kshs. 1 Trillion**. The deficit will be financed through external loans (**Kshs. 400 Billion**), Domestic Borrowing (**Kshs. 120 Billion**) and others through grants.

b) The Presentation by the Senate on the Amendments to the Division of Revenue Bill, 2015

After the submission by the National Treasury, the Membership representing the Senate also gave an account on the reasons for the additional proposed allocation including the financing measures to adequately address the concerns of the Senate. The submissions raised were as follows:

- i.) THAT Senate resolved to increase the total County allocation by **Kshs. 7.7025 Billion**. The amount of equitable share revenue to counties was increased by **Kshs. 1.7665 billion** and the conditional grants were increased by Kshs. 5.936 billion to cater for Level 5 hospitals (**Kshs. 1.536 billion**) and County Emergency Funds (**Kshs. 4.4 billion**).
- ii.) THAT Senate noted that there was need to provide an additional conditional allocation of **Kshs. 4.400 billion** to counties to provide for County Emergency Funds. It was noted that the funds would facilitate the setting up of County Emergency Funds for each county government.
- iii.) THAT The Senate resolved that the amount of **Kshs. 2.06448 billion** provided for Level 5 Hospitals facilities was not adequate and would saddle counties with managing unfunded mandates. That the allocated amount be increased by an amount of **Kshs. 1.536 billion**, bringing the total allocation to **Kshs. 3.6 billion**.

- iv.) THAT relating to the significant deviation made by the National Treasury in providing for adjustments of salaries and allowances for county assemblies and county executives, the Senate observed that the increment had been effected vide various gazette notices issued by the Salaries and Remuneration Commission (SRC) and other guidelines issued by the Transition Authority. The Senate after considering the position of the National Treasury on the matter, resolved to increase the allocation for salaries, gratuity and allowances for county executives and assemblies by **Kshs. 1.7665 billion**, bringing the total allocation to **Kshs. 6.2665 billion**, to enable counties meet their salary obligations even while examining ways to make savings in future to cater for such adjustments without using funds meant for development.
- v.) That in financing the additional allocations as proposed by the Senate, the total increase in county allocations of **Kshs. 7.7025 billion** was to be obtained/ sourced as follows:
- a) A deduction of **Kshs. 2.5 billion** from the item "*National Irrigation and Fertilizer Clearance*" bringing the allocation to the same item to **Kshs .10 billion as proposed in the second table of the Bill.**
 - b) A deduction of **Kshs. 2.5 billion** from "**Contingencies**" bringing the allocation to the same item to **Kshs. 2.5 billion.**
 - c) The remaining amount of **Kshs. 2.7025 billion** was to come from the item "**Balance available for National Government Needs**" of **Kshs. 193.591 billion**. The deductions under this item should be informed by realignment of both recurrent and development expenditure of various government ministries by taking into account efficiency in resource utilization and minimizing wastage.
- c) The National Assembly Submission on the Division of Revenue Bill, 2015**

Based on the foregoing submissions, The National Assembly on other hand also submitted and clarified on the following issues:

- i.) ABOUT the content of the Budget Policy Statement (BPS) of 2015 as passed by both Houses and as a resolution guiding the share of revenue between the two levels of government and preparation of the 2015/16 Estimates. The National Assembly reiterated that the fiscal position outlined in the BPS was a broad based consensus which involved all the critical stakeholders including the Senate who approved the Fiscal position in the BPS of 2015. This set the stage for the preparation and introduction of the Division of Revenue Bill, 2015.
- ii.) THE need to realize the resource inadequacy in light of nationally available resources and considering that the National Government still requires funds for critical national functions.

- iii.) THAT the National Government is tasked with the burden of borrowing in addressing the financing gap, considering that the money allocated to the counties is more or less guaranteed. The National government is also taking up the risks arising out of revenue shortfalls since the amount budgeted are estimates subject to various dynamics on revenue collection and management.
- iv.) THAT there is concern that the counties still had a low absorption capacity and required capacity building and therefore for the meantime more funds should only be allocated to the critical functions.
- v.) THAT, on the issue of emergency fund, according to Section 110 of the PFM Act, the counties can set up an emergency fund which will be funded by counties and the National Government will come in when an emergency occurs.
- vi.) That, the Division of Revenue Bill, 2015 was negotiated process among many key stakeholders including; the National Treasury, the Controller of Budget, The Commission on Revenue Allocation (CRA), Intergovernmental Budget and Economic Council (IBEC) and Council of Governors. The PFM Act 187 establishes the IBEC chaired by the Deputy President with membership comprising of the Chairperson of the Council of County Governors; and every County Executive Committee member for finance;
- vii.) Further, section 187 (2) **provides for the purpose of the Council as providing a forum for consultation and cooperation between the national government and county governments on—**
 - a) **The contents of the Budget Policy Statement, the Budget Review and Outlook Paper and the Medium-Term Debt Management Strategy;**
 - b) Matters relating to budgeting, the economy and financial management and integrated development at the national and county level;
 - c) Matters relating to borrowing and the framework for national government loan guarantees, criteria for guarantees and eligibility for guarantees;
 - d) Agree on the schedule for the disbursement of available cash from the Consolidated Fund on the basis of cash flow projections;
 - e) Any proposed legislation or policy which has a financial implication for the counties, or for any specific county or counties;
 - f) Any proposed regulations to this Act; and
 - g) **Recommendations on the equitable distribution of revenue between the national and county governments and amongst the county governments as provided in section 190 of the Act.**


Min. No. 5/2015: Matters Arising

The members noted that in the future there was need to have the Senate and National Assembly involved in the deliberations of IBEC meetings, this is in accordance to section 187 (8) of the PFM Act, and that the engagement and consultations so far on the 2015/16 budget was done inadequately.

In addition, the Committee was of the idea that in future the two Budget Committees develop a working relationship and a collaborative framework to compare and consult on matters involving the budget and the process with a view of having a common and informed position.

Min. No.6/2015: Adjournment

There being no other business, the meeting was adjourned at 2.30 pm. The next sitting will be on 30th April, 2015 at 8.30 am.

SIGNED: 

CHAIRPERSON- HON. MUTAVA MUSYIMI, M.P

DATE: 27.5.15

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REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS

(Bill No. 11 of 2015)

THE DIVISION OF REVENUE BILL, 2015

(As agreed to by the Mediation Committee on 27th May, 2015)

N.A. /B/No. 11/2015

THE DIVISION OF REVENUE BILL, 2015

ARRANGEMENT OF CLAUSES

Clause

- 1—Short title.
- 2—Interpretation.
- 3— Object and purpose of the Act.
- 4— Allocations to National Government and County Governments.
- 5— Variation in Revenue.
- 6— Resolution of disputes and payment of wasteful expenditure.

SCHEDULE

Equitable share of revenue raised nationally between the national and county governments for the financial year 2015/16.

Explanatory Memorandum to the Division of Revenue Bill, 2015.

A Bill for

AN ACT of Parliament to provide for the equitable division of revenue raised nationally between the national and county governments in the 2015/16 financial year, and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I— PRELIMINARY

Short title.

1. This Act may be cited as the Division of Revenue Act, 2015.

Interpretation.

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

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“conditional allocations” means allocations in the share of revenue allocated to the national government for the purpose of meeting specified county government expenditure including financing county expenses relating to development programmes;

“county allocation” means the share of national revenue computed in accordance with Article 203(2) of the Constitution that is allocated for the use of the county government consisting of the county executive and the county assembly and includes conditional allocations under Article 202(2);

“county equitable share” means the share of national revenue allocated to the county level of government to be divided amongst county governments using the basis provided for in Article 217 of the Constitution;

“national government allocation” means the share of national revenue computed in accordance with Article 203(2) of the Constitution that is allocated for the use of the national government consisting of the Executive, Parliament and the Judiciary

No. 16 of 2011. “revenue” has the meaning assigned to it under section 2 of the Commission on Revenue Allocation Act, 2011;

“State Organ” has the meaning assigned to it under Article 260 of the Constitution; and

No. 18 of 2012. “wasteful expenditure” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012.

Object and purpose of the Act.

3. The object and purpose of this Act is to provide for—

- (a) the equitable division of revenue raised nationally between the national and county levels of government for the financial year 2015/16 in accordance with Article 203(2) of the Constitution;
- (b) the financing and continuation of on-going services in accordance with Articles 187(2) and 203(1)(d) of the Constitution.

Allocations to national and county governments

4. Revenue raised by the national government in respect of the financial year 2015/16 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 a financial year exceeds the projected revenues set out in the Schedule, the excess revenue shall be apportioned between the national government and county governments on a *prorata* basis in accordance with the criteria set out in the Schedule.

Resolution of disputes and payment of wasteful expenditure.

6. (1) Any State Organ involved in an intergovernmental dispute regarding any provision of this Act or any division of revenue matter or allocation shall, in accordance with Article 189 of the Constitution and before approaching a court to resolve such dispute, make every effort to settle the dispute with the other State Organ concerned, including exhausting all alternative mechanisms provided for resolving disputes in relevant legislation.

No. 2 of 2012.

(2) If a court is satisfied that a State Organ, in an attempt to resolve a dispute has not exhausted all the mechanisms for alternative dispute resolutions as contemplated in section 35 of the Intergovernmental Relations Act, 2012 and refers the dispute back for the reason that the State Organ has not complied with subsection (1), the expenditure incurred by that State Organ in approaching the court shall be regarded as wasteful expenditure.

(3) The costs in respect of such wasteful expenditure referred to in subsection (2) shall, in accordance with a prescribed procedure, be recovered without delay from the person who caused the State Organ not to comply with the requirements of subsection (1).

SCHEDULE

(s.4)

ALLOCATION OF REVENUE RAISED NATIONALLY BETWEEN THE NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2015/16

Type/Level of Allocation	Amount in Ksh.	Percentage (%) of 2012/13 Audited Revenue(i.e. Ksh. 776.9 billion)
National Government	976,925,500,000	
Of which:		
<i>Free Maternal Health Care</i>	4,298,000,000	
<i>Leasing of Medical Equipment</i>	4,500,000,000	
<i>Level-5 Hospitals</i>	3,600,480,000	
<i>Healthcare facilities compensation for forgone user fees</i>	900,000,000	
Equalisation Fund	6,000,000,000	0.80%
County Equitable Share	259,774,500,000	33%
Total Shareable Revenue	1,242,700,000,000	
County Allocations		
County Equitable Share	259,774,500,000	
Conditional Allocations (<i>of which</i>):	27,269,685,204	
1. <i>Free Maternal Health Care</i>	4,298,000,000	
2. <i>Leasing of Medical Equipment</i>	4,500,000,000	
3. <i>Level-5 Hospitals</i>	3,600,480,000	
4. <i>Allocation from Fuel Levy Fund (15%)</i>	3,300,000,000	
5. <i>Healthcare facilities compensation for forgone user</i>	900,000,000	

The Division of Revenue Bill, 2015

<i>fees</i>		
<i>6. Conditional Allocations - loans and grants</i>	<i>10,671,205,204</i>	
Total County Allocations	287,044,185,204	37%

MEMORANDUM OF OBJECTS AND REASONS

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 on-going services are provided for.

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

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 2015/16.

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.

Clause 6 of the Bill contains general provisions which emphasize on alternative dispute resolution before instituting court proceedings and includes provisions on personal liability on public officers who cause a State Organ to incur costs because of referring disputes relating to division of revenue to courts prior to exhausting available alternative dispute resolution mechanism.

This Bill is a Bill concerning county governments for the purposes of Article 110 of the Constitution.