Paper laid
22/7/2014

REPUBLIC OF KENYA

HARAMBEE

PARLIAMENT OF KENYA

ELEVENTH PARLIAMENT – SECOND SESSION (2014)

THE REPORT OF

THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE BILL, 2014

PURSUANT TO ARTICLE 113 OF THE CONSTITUTION

JOINT CLERKS CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI.
JULY 2014

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1.0 INTRODUCTION

1. The Mediation Committee on the Division of Revenue Bill, 2014 was a constituted by the Speakers of the two Houses of Parliament on 24th June, 2014 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. Billow Kerrow, MP. - **Vice-Chairperson**
    3. The Hon. Mary Emaase, MP
    4. The Hon. Sen. Mutahi Kagwe, MP.
    5. The Hon. Sen. Mutula Kilonzo Junior, MP.
    6. The Hon. John Mbadi, 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 four (4) sittings to deliberate on the Division of Revenue Bill, 2014 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. Billow Kerrow, MP were elected as Chairman and Vice Chairman respectively.

5. At this meeting 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.

6. The Committee commenced its work by developing a statement of issues of concern raised that necessitated the rejection of Bill by the National Assembly. The statements comprised of the amendments made by the Senate to the Division of Revenue Bill, 2014.

7. Appended to this report is a version of the Bill developed by the Committee for consideration by both Houses.

1.3 Acknowledgements

8. The Chairperson, on behalf of the Committee, whishes 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.

9. 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.

10. Finally, it is now my pleasant duty and privilege, on behalf of the Mediation Committee on the Division of Revenue Bill, 2014, to present and commend this report including an 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: 17th July 2014

2.0 BACKGROUND

11.The National Assembly passed the Division of Revenue Bill, 2014 on the 23rd April 2014. Following the Approval of the Division of Revenue Bill (National Assembly Bill No. 13 of 2014) with amendments by the National Assembly, ordinarily a Communication message is forwarded to the Senate on 25th April 2014 as a message seeking their concurrence.

12. Following the submittal of the Division on Revenue Bill (National Assembly Bill No. 13 of 2014) with amendments by the National Assembly to the Senate, the Senate deliberated on the Division of Revenue, and made further amendments. Consequently, The Senate sent a message on the Division of Revenue Bill, with amendments on 21st May, 2014 for the concurrence of this House. The two amendments were;

a.) To amend clause 4 of the Bill to provide for adequate funding for all level 5 hospitals through allocation to the functions from the national level of government as opposed to the County level of government. The amendment further referenced Article 187(2) as the basis for the amendment.

b.) An amendment to the schedule to alter the stipulation that the allocation to Counties is 43% of the most recent audited and approved revenue by the National Assembly. (in this case the 2009/10 revenue figures of Kshs. 529.3 billion) to simply read that the allocation due to Counties supersedes the minimum threshold of 15% of revenue collected by the government as stipulated under Article 203 (2).

13.Upon receipt of the Senate message, the Matter was referred to the Budget and Appropriations Committee to report to the House by 10th June 2014. The Budget and Appropriations Committee of the National Assembly considered and deliberated on the Senate's amended version of the Division of Revenue Bill. The Committee tabled a report on 10th June 2014. The Report recommended rejection of the two proposed amendments to the Division of Revenue Bill, 2014 by the Senate. The National Assembly adopted the Report and hence leading to the establishment of the mediation Committee.

2.1 Establishment of Mediation Committee

14.The Mediation Committee was established pursuant to Article 112 (1) (a) and 113 of the Constitution which states:-
Article 112(1)- " If one House passes an ordinary Bill concerning counties and the second House –

(a) rejects the Bill, it shall be referred to a Mediation Committee appointed under Article 113"

15.Article 113(1)-

1). If a Bill is referred to a mediation committee under Article 112, the Speaker of both Houses shall appoint a mediation committee consisting of equal numbers of members of each House to attempt to develop a version of the Bill that both Houses will pass.
2). If the mediation committee agrees on a version of the Bill, each House shall vote to approve or reject that version of the Bill.
3). If both Houses approve the version of the Bill proposed by the mediation committee, the Speaker of the National Assembly shall refer the Bill to the President within seven days for assent.
4). If the mediation committee fails to agree on a version of the Bill within thirty days, or if a version proposed by the committee is rejected by either House, the bill is defeated.

2.2 Appointment Process of Members

16.Pursuant to Article 113 of the Constitution and Standing Order 149 of the National Assembly, the Clerk of the National Assembly wrote to the Clerk of the Senate vide letter dated 19th June, 2014 notifying him of the members appointed to represent the National Assembly in the Mediation Committee on the Division of Revenue Bill, 2014. The National Assembly nominated the following members to the Mediation Committee; Hon. Mutava Musyimi, M.P., Hon. John Mbadi, M.P. and Hon. Mary Emaase, M.P.

17.On the other hand, pursuant to the said provisions of the Constitution and Standing Order 154 of the Senate, the Clerk of the Senate vide a letter dated 23rd June, 2014 forwarded to the Clerk of the National Assembly nominating Sen. Billow Kerrow, MP, Sen. Beatrice Elachi, M.P. and Sen. (Dr) Bonnie Khalwale M.P. to represent the Senate in the Mediation Committee. The

Joint Clerks consequently convened the first sitting of the Committee which was held on Wednesday 1st July, 2014. However, due to time constraints, a second letter dated 2nd July, 2014 replacing two (2) Senators who were engaged on other parliamentary business was forwarded to the Clerk of the National Assembly. The new replacements were Sen. Mutahi Kagwe, MP and Sen. Mutula Kilonzo Jnr M.P. to replace Sen. Beatrice Elachi, M.P. and Sen. (Dr) Bonnie Khalwale M.P respectively.

3.0 CONSIDERATION OF THE DIVISIONS OF REVENUE BILL, 2014

3.1 Consideration by National Assembly

18. The Division of Revenue Bill, 2014 originated in the National Assembly and was passed with amendments on 23rd April 2014. The Bill was referred to the Senate for concurrence on 25th April 2014 pursuant to the provision of the National Assembly Standing Orders 233 (4) and 142 (*Concurrence of the other House*).

3.2 Consideration by the Senate

19. The Division of Revenue Bill, 2014 was submitted to the Senate on 25th April 2014. The Bill was referred to the Senate's Standing Committee on Finance, Commerce and Budget. The Committee tabled its report with amendments on 13th May, 2014. The Senate passed the Bill with amendments on 15th May 2014. The Senate forwarded its amendments to the Division of Revenue Bill (National Assembly Bill no. 13 of 2014) on 3rd June 2014 for the Concurrence of the National Assembly.

3.3 Consideration by the National Assembly of the Bill from the Senate

20. The National Assembly considered and discussed the Senate's amended version of the Division of Revenue Bill, 2014. The Report recommended rejection of the two proposed amendments to the Division of Revenue Bill, 2014 by the Senate. The National Assembly adopted the Report and hence leading to the establishment of the mediation Committee.

3.4 Consideration by the Mediation Committee

21. The bone of contention raised by the National Assembly bordered on Senate's two amendments to the Bill;
    i. *Amendment to clause 4 of the Bill to provide for adequate funding for all level 5 hospitals through allocation to the functions from the national level of government as opposed to the County level of government. The amendment further referenced Article 187(2) as the basis for the amendment.*
    ii. *An amendment to the schedule to alter the stipulation that the allocation to Counties is 43% of the most recent audited and approved revenue by the National Assembly (in this case the 2009/10 revenue figures of Kshs. 529.3 billion) to simply read that the allocation due to Counties supersedes the minimum threshold of 15% of revenue collected by the government as stipulated under Article 203 (2).*

22. The Committee identified the following amendments made by the Senate that necessitated rejection of the Bill by the National Assembly as follows:-
    i. Amendments to the Schedule of the Bill.

- The Senate had deleted the third column of the schedule representing the percentage allocations and represented it in form of notes under the schedule in a bid to bring better clarity in the representation of the amounts and percentages shareable to the County Governments of the total shareable revenue.

- The Committee noted that the removal of *43%, as a representation of percentage of Kshs 529.3 billion being the national revenue for the year 2009/2010 in line with Article 203(2) of the Constitution* in the notes under the schedule was one of the reason why the amendment was rejected by the National Assembly.

- The Committee deliberated and agreed to reinstate the third column of the schedule, but provide better explanation at the footnote to read as follows:

Note

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

[2] ***Based on 2009/10 audited revenues approved by the National Assembly, the County Allocation of Kshs. 226.66 billion represents 43% of Kshs. 529.3 billion audited revenue approved by the National Assembly in accordance with Article 203(3) of the Constitution.***

ii. **Amendment on the Article 4 of the Division of Revenue Bill, 2014.**

- The Committee was informed that the 226.66 was a product of several negotiations and compromises by stakeholders. In addition, the resolution to provide for the amount as the sharable revenue to counties was to facilitate the counties to prioritize their budgetary allocations without interference.

- The Committee heard that the Senate had proposed an amendment to Article 4 of the Division of Revenue Bill, 2014 to provide for the National Government to fund Level 5 hospitals. The Committee noted the fears of the Senate that Level 5 hospitals risked closure if not well funded.

- The argument was that counties with Level 5 hospitals would be unfairly disadvantaged as they would be forced to put in an extra amount of their equitable share to run the level 5 health facilities which provide services to other nearby counties.

- It was noted that the amount counties have, may not be sufficient for running level 5 hospitals and those with Level 5 hospitals had made a specific request for a slight increase in additional revenue to support the running of Level 5 hospitals.

- It was also noted that there was an urgent need to conduct costing of the Level 5 Hospitals function to determine the amount of resources sufficient to run this function.

- Concerns were raised by the Committee on utilization of funds by counties and the accusations that counties were misusing money on issues that were not of priority. The Committee heard that the Senate was engaged in active consultations with the counties on all budgetary concerns.

- The Senate Committee on Finance, Commerce and Budget was working on mechanisms to set up a framework for county government's ceilings on expenditures. This would enhance accountability and expenditure decisions by county governments. The County Assemblies were also working on building capacity for oversight.

4.0 THE COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

23. The Mediation Committee observed that indeed there is urgent need to unlock the matter and cause the County Allocation of Revenue Bill, 2014 to proceed.

24. The Committee observed that Level 5 hospitals are not provided for explicitly in the Constitution and hence the need to find a mechanism of dealing with the matter in the future to enable level 5 hospitals' ability to function appropriately.

25. The Committee observed that there is urgent need for the Health Committees of the two Houses of Parliament to work together in consultation with other stakeholders to address issues of Level 5 Hospitals and carry out the actual costing of running each of the Level 5 Hospitals.

26. The Mediation Committee considered the above issues raised in the National Assembly and consequently developed the annexed version of the Bill (Appendix 1) which addresses the noted concerns. All matters were agreed on by consensus and therefore the report was unanimously adopted by the Members of the Committee.

27. The Mediation Committee therefore recommends that;

i.) The national government allocates Kshs 1.87 billion conditional allocation for financing all Level 5 Hospitals as currently listed.

ii.) The two Houses of Parliament to approve this report and its appendix thereof.

This report was unanimously adopted by the following members:-

NO.	NAME	SIGNATURE
1.	The Hon. Mutava Musimi, MP. -**Chairperson**	
2.	The Hon. Sen. Billow Kerrow, MP. -**Vice-Chairperson**	
3.	The Hon. Mary Emaase, MP	
4.	The Hon. Sen. Mutahi Kagwe, MP.	
5.	The Hon. Sen. Mutula Kilonzo Junior, MP.	
6.	The Hon. John Mbadi, MP.	

--------------------- End -------------------------------

MINUTES OF THE 3RD SITTING OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE BILL, 2014 HELD IN THE MAIN BOARDROOM, ON THE GROUND FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS, ON TUESDAY, 15TH JULY, 2014 AT 12.00 PM.

Present

1. Hon. Mutava Musyimi - **Chairman**
2. Sen. Billow Kerrow -**Vice Chairman**
3. Sen. Mutahi Kagwe
4. Sen. Mutula Kilonzo (Jnr)
5. Hon. Mary Emasse

Absent with Apology

Hon. John Mbadi

IN ATTENDANCE

Parliamentary Staff

1. Mr. Njenga Njuguna – Director, Committee Services, Senate
2. Mr. Dennis Abisai – Principal Legal Officer, Senate
3. Mr. Fredrick Muthengi - Principal Fiscal Analyst, National Assembly
4. Ms. Emmy Chepkwony – Senior Clerk Assistant, Senate

Min. No. 10/2014: Preliminaries

The Committee meeting commenced at 12.10 p.m. Prayers were said by Hon. Mutava Musyimi, M.P.

Min. No. 11/2014: Adoption of the Agenda

The agenda was adopted by the Committee having been proposed by Sen. Mutula Kilonzo (Jnr), M.P and seconded by Hon. Mary Emaase, M.P

Min. No. 12/2014: Confirmation of the Minutes of the previous sitting

The minutes of the following sittings were confirmed as a true record of the sittings proceedings and signed by the Chairman:

i. Minute of the 1st sitting held on Wednesday 1st July, 2014 after being proposed by Sen. Billow Kerrow, M.P and seconded by Sen. Hon. Mary Emasse, M.P.

ii. Minute of the 8th July, 2014 sitting held on Wednesday 1st July, 2014 after being proposed by Sen. Billow Kerrow, M.P and seconded by Sen. Hon. Mary Emasse, M.P.

Min. No. 13/2014: Consideration of the Bill referred to the Committee

The Committee considered the Bill and agreed to the following to provide the following provision to unlock the contentious issues on the Division of Revenue Bill, 2014.

i. The presentation of the changes the Senate had made to the schedule of the Bill.

- The Committee reviewed the proposed schedule and recommended that the third schedule representing percentages and the provisions of Article 203(2) of the Constitution be reinstated on the Schedule and the note on the schedule is adopted to read as follows:

Note

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

[2] ***Based on 2009/10 audited revenues approved by the National Assembly, the County Allocation of Kshs. 226.66 billion represents 43% of Kshs. 529.3 billion audited revenue approved by the National Assembly in accordance with Article 203(3) of the Constitution.***

ii. Amendment on the Article 4 of the Division of Revenue Bill, 2014.

Amendments were proposed to provide for level 5 Hospitals through a contribution of 1.87 billion from the allocation to National Government. It was recommended that counties with Level 5 Hospitals budget for the respective hospitals from the amount allocated to them. It was further agreed that if the resources will not be sufficient to run this hospitals the affected counties will raise up the matter with the National Government under the provisions of Article 187 of the Constitution.

The Committee noted that it would be very important for a decision to be made to determine if Level 5 Hospitals in the country are under the National Government or is been devolved to County Government. This will facilitated a better decision on the funding of the Hospitals in going forward.

The Committed noted the report of the National Assembly Health Committee on the recommendation that Level 5 Hospitals should be the function the National Government. It was recommended that the Health Committees from both Houses convene a forum with all the stakeholders to arrive at a conclusive decision on the matter with a view to advising on the costing and future funding of the function and a decision as to whether this is a concurrent function.

Min. No.14/2014: Adjournment

There being no other business to consider and the time being fifty minutes past Twelve O'clock, the Chairperson adjourned the meeting.

SIGNED: ....

CHAIRPERSON- HON. MUTAVA MUSYMI, M.P

DATE: .... 16th Dec 2014 **..........**

MINUTES OF THE 4TH SITTING OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE BILL, 2014 HELD IN THE MAIN BOARDROOM, ON THE GROUND FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS, ON TUESDAY, 15TH JULY, 2014 AT 2.00 PM.

Present

1. Hon. Mutava Musyimi - **Chairman**
2. Sen. Billow Kerrow -**Vice Chairman**
3. Sen. Mutahi Kagwe
4. Sen. Mutula Kilonzo (Jnr)
5. Hon. Mary Emasse

Absent with Apology

Hon. John Mbadi

IN ATTENDANCE

Parliamentary Staff

1. Mr. Njenga Njuguna – Director, Committee Services, Senate
2. Mr. Dennis Abisai – Principal Legal Officer, Senate
3. Mr. Fredrick Muthengi - Principal Fiscal Analyst, National Assembly
4. Ms. Emmy Chepkwony – Senior Clerk Assistant, Senate

Min. No. 15/2014: Preliminaries

The Committee meeting commenced at 2.10 p.m. Prayers were said by Hon. Mutava Musyimi, M.P.

Min. No. 16/2014: Adoption of the Agenda

The agenda was adopted by the Committee having been proposed by Sen. Mutula Kilonzo (Jnr), M.P and seconded by Hon. Mary Emaase, M.P

Min. No. 17/2014: Confirmation of the Minutes of the previous sitting

The minutes of the following sittings were confirmed as a true record of the sittings proceedings and signed by the Chairman:

i. Minute of the 3rd sitting held on Tuesday 15th July, 2014 at 12.00pm after being proposed by Sen. Billow Kerrow, M.P and seconded by Hon. Mary Emasse, M.P.

ii. Minute of the 4th sitting held on Tuesday 15th July, 2014 at 2.00 pm after being proposed by Sen. Mutahi Kagwe, M.P and seconded by Hon. Mary Emasse, MP.

Min. No. 13/2014: Consideration of the Bill referred to the Committee

The Committee considered the Bill and adopted the following provision to unlock the contentious issues on the Division of Revenue Bill, 2014.

i. The presentation of the changes the Senate had made to the schedule of the Bill.

- The Committee reviewed the proposed schedule and recommended that the third schedule representing percentages and the provisions of Article 203(2) of the Constitution be reinstated on the Schedule and a note on the schedule is amended and adopted to read as follows:

SCHEDULE

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

Type / Level of allocation	Amount in Kshs. billions	Article 203(2) (Minimum threshold-15%)
Total Shareable Revenue	1,026.31	
A. National Allocation	799.65	

of which; Conditional allocation for Economic Stimulus Package [1] Conditional allocation for Level 5 Hospitals Equalization Fund	**1.45** **1.87** **3.4**	
B. County Allocation [2]	**226.66**	**43%**

Note

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

[2] *Based on 2009/10 audited revenues approved by the National Assembly, the County Allocation of Kshs. 226.66 billion represents 43% of Kshs. 529.3 billion audited revenue approved by the National Assembly in accordance with Article 203(3) of the Constitution.*

ii. **Amendment on the Article 4 of the Division of Revenue Bill, 2014.**

Amendments were proposed to provide for level 5 Hospitals through a contribution of 1.87 billion from the allocation to National Government. It was recommended that counties with Level 5 Hospitals budget for the respective hospitals from the amount allocated to them. It was further agreed that if the resources will not be sufficient to run this hospitals the affected counties will raise up the matter with the National Government under the provisions of Article 187(2) of the Constitution.

Article 4 (b) was therefore amended to read as follows:

In accordance with the provisions of Article 187(2) and Article 203(1)(d) of the Constitution, and for further certainty, the allocation for the national government under sub-clause (1) includes Ksh 1.87 billion conditional allocation for financing all Level 5 Hospitals as currently listed.

Min. No.19/2014: Adjournment

There being no other business to consider and the time being fifty minutes past two O'clock in the afternoon, the Chairperson adjourned the meeting.

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

DATE: .... 16th July 2014

MINUTES OF THE 1ST SITTING OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE BILL, 2014 HELD IN THE MAIN BOARDROOM, ON THE GROUND FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS, ON WEDNESDAY, 1ST JULY, 2014 AT 4.00 P.M.

Present

1. Hon. Mutava Musyimi - **Chairman**
2. Sen. Billow Kerrow -**Vice Chairman**
3. Hon. Mary Emasse
4. Hon. John Mbadi

Absent with Apology

1. Sen. Boni Khalwale
2. Sen. Beatrice Elachi

IN ATTENDANCE

Parliamentary Staff

1. Mr. Njenga Njuguna – Director, Committee Services, Senate
2. Mr. Michael Karuru– Deputy Director Legal Services, National Assembly
3. Mr. Dennis Abisai – Principal Legal Officer, Senate
4. Mr. Fredrick Muthengi - Principal Fiscal Analyst, National Assembly
5. Ms. Emmy Chepkwony – Senior Clerk Assistant, Senate
6. Ms. Brenda Ogembo – First Clerk Assistant, Senate

Min. No. 1/2014: Preliminaries

i. The Committee meeting commenced at 4.28 p.m. Prayers were said by Hon. Mutava Musyimi, M.P.
ii. All the members present introduced themselves.
iii. The Committee was informed that the Mediation Committee was formed in accordance with the Constitution and the Standing Orders of both Houses following the rejection by the National Assembly of the Amendments made by the Senate on the Division of Revenue Bill, 2014.

    It was noted the Committee had a mandate to develop a version of the Bill that both Houses will pass but if the Committee fails to agree on a version of the Bill or if the version proposed by the Committee is rejected by either House, the Bill is defeated.

Min. No. 02/2014: Adoption of the Agenda
The agenda was adopted by the Committee having been proposed by Hon. Mary Emaase and seconded by Hon. John Mbadi.

Min. No. 03/2014: Remarks by the Director Committee Services
The Director Senate Committee Services represented the Office of the Clerk Senate and of the Clerk National Assembly in conducting the elections of both the Chairperson and Vice Chairperson of the Committee.

Min. No. 04/2014: Election of Chairperson

The Director invited nominations for the election of Chairperson.

Hon. Mutava Musyimi was unanimously elected by Members present as the Chairman of the Mediation Committee on the Division of Revenue Bill, 2014 after being proposed by the Hon. Mary Emasse and Seconded by Hon. John Mbadi. Hon. Mutava Musyimi was declared as the duly elected Chairman of the Mediation Committee on the Division of Revenue Bill, 2014.

Min. No. 05/2014: Election of Vice-Chairperson

Sen. Billow Kerrow was unanimously elected by Members present as the Vice Chairman of the Mediation Committee on the Division of Revenue Bill, 2014 after being proposed by the Hon. Mutava Musyimi and Seconded by Hon. John Mbaadi. Sen. Billow Kerrow was declared as the duly elected Vice Chairman of the Mediation Committee on the Division of Revenue Bill, 2014.

Min. No. 06/2014: Remarks by the Chairperson, vice Chairperson and the Members.

The elected Chairman and Vice Chairman thanked the members for electing them and pledged to lead the mediation process to a successful conclusion.

The members congratulated the Chair and Vice-Chair for their election and committed themselves to providing Parliament with an agreeable version of the Bill.

Min. No. 7/2014: Deliberation on the Mediation Committee mandate
The Committee commenced its work by developing a statement of issues of concern that necessitated the rejection of Bill by National Assembly. The

statements comprised of the amendments made by the Senate to the Division of Revenue Bill, 2014 as follows:

Min. No. 8/2014: Consideration of the Bill referred to the Committee

The Mediation Committee noted that it is established pursuant to Article 112 (1) (a) and 113 of the Constitution which states:-

i. **The presentation of the changes made by the Senate to the schedule of the Bill.**

- The Senate had deleted the third column of the schedule representing the percentage allocations and represented it inform of notes under the schedule in a bid to bring better clarity in the representation of the amounts and percentages shareable to the County Governments of the total shareable revenue.
- The Committee urged that the removal of *43%, as a representation of percentage of 529.3 Billion Shillings being the national revenue for the year 2009/2010 in line with Article 203(2) of the Constitution* in the notes under the schedule was the reason why the amendment was rejected by the National Assembly.
- The Committee deliberated and agreed to amend both the Senate and National Assembly versions of the percentage representation to an agreed format. It was agreed that the note should read as follows:

Note

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

[2] ***Based on 2009/10 audited revenues approved by the National Assembly, the County Allocation of Kshs. 226.66 billion represents 43% of Kshs. 529.3 billion audited revenue approved by the National Assembly in accordance with Article 203(3) of the Constitution.***

ii. **Amendment on the Article 4 of the Division of Revenue Bill, 2014.**

The Committee was informed that the 226.66 was a product of several negotiations and compromises by stakeholders and the resolution to provide for the amount as the sharable revenue to counties was to facilitate the counties to prioritize their budgetary allocations without interference.

The Committee heard that the Senate had proposed an amendment to Article 4 of the Division of Revenue Bill, 2014 to provide for the National Government to fund Level 5 hospitals. The Vice Chairman communicated the fears of the Senate that Level 5 hospitals risked closure if not well funded. This could expose the country to a major health crisis.

The argument was that counties with Level 5 hospitals would be unfairly disadvantaged as they would be forced to put in an extra amount of their equitable share to run the level 5 health facilities which provide services to other nearby counties. It was also pointed out that other Counties without Level 5 hospitals were keen to funding their level 4 hospitals which they consider county health facilities with the amount allocated under the county sharable revenue.

It was noted that the amount counties have may not be sufficient for running level 5 hospitals and those with Level 5 hospitals had made a specific request for a slight increase in additional revenue to support the running of Level 5 hospitals. The Senate requested the National government at its discretion to allocate an amount for level 5 hospitals to ensure they can run their services.

It was also noted that there was an urgent need to conduct costing of the Level 5 Hospital function to determine the amount of resources sufficient to run this function.

Concerns were raised by the Committee on utilization of funds by counties and the accusations that counties were misusing money on issues that were not of priority. The Vice Chairman informed the Committee that the Senate was engaged in an active conversation with the counties on all budgetary concerns. The Senate Committee on Finance, Commerce and Budget was working on mechanisms to set up a framework for county government's ceilings on expenditures. This would enhance accountability and expenditure decisions by county governments. The Counties Assemblies were also working on building capacity for oversight.

The Committee resolved to defer the matter on the amendment made to Article 4 of the Division of Revenue Bill, 2014 to its next meeting.

Min. No.9/2014: Adjournment

There being no other business to consider and the time being forty minutes past Five O'clock, the Chairperson adjourned the meeting.

SIGNED: ....

CHAIRPERSON- HON. MUTAVA MUSYMI, M.P

DATE: 15th July 2014

MINUTES OF THE 2ND SITTING OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE BILL, 2014 HELD IN THE MAIN BOARDROOM, ON THE GROUND FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS, ON TUESDAY, 8TH JULY, 2014 AT 4.00 P.M.

Present

1. Hon. Mutava Musyimi - **Chairman**
2. Sen. Mutahi Kagwe
3. Hon. John Mbadi
4. Sen. Mutula Kilonzo (Jnr)

Absent with Apology

1. Sen. Billow Kerrow -**Vice Chairman**
2. Hon. Mary Emasse

IN ATTENDANCE

Parliamentary Staff

1. Mr. Njenga Njuguna – Director, Committee Services, Senate
2. Mr. Michael Karuru – Deputy Director Legal Services, National Assembly
3. Mr. Dennis Abisai – Principal Legal Officer, Senate
4. Mr. Fredrick Muthengi - Principal Fiscal Analyst, National Assembly
5. Ms. Emmy Chepkwony – Senior Clerk Assistant, Senate
6. Ms. Brenda Ogembo – First Clerk Assistant, Senate

Min. No. 10/2014: Preliminaries

i. The Committee meeting commenced at 2.15p.m. Prayers were said by Hon. Mutava Musyimi, M.P.
ii. All the members present introduced themselves.

Min. No. 11/2014: Adoption of the Agenda

The agenda was adopted by the Committee having been proposed by Hon. Mutula Kilonzo and seconded by Hon. John Mbadi.

Min. No. 12/2014: Confirmation of the Minutes of the previous sitting

Confirmation of the minutes of the previous sitting was deferred to a later.

Min. No. 13/2014 Consideration of the Bill referred to the Committee

The Committee considered the contentious issues in the Bill that had necessitated mediation and recommended the following:

i. **The presentation of the changes the Senate had made to the schedule of the Bill.**

- The Committee reviewed the proposed schedule and recommended that the third schedule representing percentages and the provisions of Article 203(2) of the Constitution be reinstated on the Schedule and the note on the schedule is adopted to read as follows:

Note

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

[2] ***Based on 2009/10 audited revenues approved by the National Assembly, the County Allocation of Kshs. 226.66 billion represents 43% of Kshs. 529.3 billion audited revenue approved by the National Assembly in accordance with Article 203(3) of the Constitution.***

ii. **Amendment on the Article 4 of the Division of Revenue Bill, 2014.**

Amendments were proposed to provide for level 5 Hospitals through a contribution of 1.87 Billion from the National Government and 1.87 Billion from the allocation to the County Government.

The Committee considered this proposal as a possible solution to unlock the mediation process and deferred its meeting to allow members to conduct further consultations before concluding the process.

Min. No.14/2014: Adjournment

There being no other business to consider and the time being forty minutes past Four O'clock, the Chairperson adjourned the meeting.

SIGNED: ....

CHAIRPERSON- HON. MUTAVA MUSYMI, M.P

DATE: 15th July 2014

REPUBLIC OF KENYA

PARLIAMENT

THE DIVISION OF REVENUE BILL, 2014

(A version of the Division of Revenue Bill, 2014 (National Assembly Bills No. 15 of 2014) as agreed on by a mediation committee appointed pursuant to Article 113 of the Constitution.)

THE DIVISION OF REVENUE BILL, 2014

ARRANGEMENT OF CLAUSES

Clause

THE DIVISION OF REVENUE BILL, 2014

A Bill for

AN ACT of Parliament to provide for the equitable division of revenue raised nationally between the national and county governments in 2014/15 financial year, and for connected purposes.

ENACTED by the Parliament of Kenya, as follows-

Short title and commencement.

1. This Act may be cited as the Division of Revenue Act, 2014, and shall come into operation upon publication.

Interpretation.

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

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

"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;

"national 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;

"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;

"wasteful expenditure" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012.

No. 18 of 2012

Object and purpose of this 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 2014/15 in accordance with Article 203(2) of the Constitution.

Allocations to county governments

4. (1) Revenue raised by the national government in respect of the financial year 2014/15 shall be divided among the national and county governments as set out in the Schedule to this Act.

(2) In accordance with the provisions of Article 187(2) and Article 203(1)(d) of the Constitution, and for further certainty, the allocation for the national government under sub-section (1) includes Kshs.1.87 billion conditional allocation for financing all Level 5 Hospitals as currently listed.

Variation in revenue

5.(1) If the actual revenue raised nationally in a financial year falls short of the expected revenue set out in the Schedule, the shortfall shall be borne by the National Government, to the extent of the threshold prescribed in the regulations by the Cabinet Secretary.

(2) If the shortfall in revenue referred to in sub-section (1) exceeds the threshold prescribed by the Cabinet Secretary, the shortfall in excess of that threshold shall be apportioned between the national and county governments on a *prorata* basis.

(3) If the actual revenue raised nationally in a financial year exceeds the expected revenue set out in the Schedule, the excess revenue shall be apportioned between the national government and county governments on a *prorata* basis.

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.

(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 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

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

Type / Level of allocation	Amount in Kshs. billions	Article 203(2) (Minimum threshold- 15%)
Total Shareable Revenue	**1,026.31**	
A. National Allocation	**799.65**	
of which;		
Conditional allocation for Economic Stimulus Package [1]	**1.45**	
Conditional allocation for Level 5 Hospitals	**1.87**	
Equalization Fund	**3.4**	
B. County Allocation [2]	**226.66**	**43%**

Note

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

[2] *Based on 2009/10 audited revenues approved by the National Assembly, the County Allocation of Kshs. 226.66 billion represents 43% of Kshs. 529.3 billion audited revenue approved by the National Assembly in accordance with Article 203(3) of the Constitution.*

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, and to provide for additional resources in accordance with Article 202(2) 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 provides 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 from the national government to the county governments in 2014/15 financial year.

Clause 5 of the Bill deals with mechanisms for adjusting for variations in revenues.

Clause 6 of the Bill contains general provisions which emphasize on 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.

APPENDIX

EXPLANATORY MEMORANDUM TO THE DIVISION OF REVENUE BILL, 2014

The Division of Revenue Bill, 2014 has been prepared in fulfilment of the requirements of Article 218(1) of the Constitution and Section 191 of the Public Finance Management Act, 2012.

Article 218(2) of the Constitution requires that the Bill be submitted to Parliament every year together with a memorandum explaining:

(a) the proposed revenue allocation set out in the Bill;

(b) the extent to which the Bill has taken into account the provisions of Article 203 (1) of the Constitution; and

(c) any significant deviations from the recommendations of the Commission on Revenue Allocation (CRA).

This memorandum has therefore been prepared as an attachment to the Division of Revenue Bill, 2014 in fulfilment of the requirements of Article 218(2) of the Constitution **and is meant for the guidance of Parliament in enacting this Bill but should not be construed as being binding on Parliament in subsequent proceedings relating to the budget estimates and the annual Appropriation Bill for a particular financial year.**

I. Explanation of the Allocation of Equitable Share of Revenue Raised Nationally and Conditional Allocation between National and County Governments as Proposed in the Bill

The division of revenue between the two levels of government in the Bill has been arrived at after taking into account the following factors:

(a) **Adherence to the county allocations threshold set in the Article 203(2) of the constitution**: The bill considers the provision that revenue allocations to the counties should be at least 15% of nationally raised revenue calculated on basis of latest audited accounts in line with Article 203. The last audited revenues approved by the National Assembly are those of 2009/10. Based on these revenue figures, the allocation to counties is above the minimum threshold of 15% of all revenue collected by the national government as stipulated under Article 203(2) of the Constitution.

(b) **Costing of functions**: Ideally, revenue allocations should be based on costing of the functions and needs of each level of government. Information on the real cost of functions to each level of government and their actual needs has not been done. This has made it difficult to determine the quantum of revenue that should be set aside for counties.

(c) **Adherence to criteria set out in Article 203(1):** The constitution requires that the revenue allocations take into account the elaborate provisions set out in Article 203(1). The explanation about how this was addressed is indicated below.

(d) **Determination of conditional or unconditional allocations (Article 202(2)):** The Constitution allows the national government to allocate resources to counties from its own revenue share as conditional or unconditional allocations.

Broadly, the revenue allocations in the Bill are determined taking into account the following fiscal policy matters:

(a) **Need to ensure stable revenue allocations between the two levels of government:** revenue allocations between the two levels of government should be stable and predictable. In the absence of proper costing of functions or a needs-based framework for financing of the two levels of government, the revenue allocations are based on expected revenue collections in the 2014/15 financial year and revenue growth.

(b) **Observing fiscal austerity or hard budget constraints:** the bill considers that each level of government should efficiently spend available resources. The prevailing orientation in public sector budgeting is to simply increase resources to each level of government. But, such approach is inconsistent with fiscal prudence in the face of limited tax resources.

(c) **Fostering the cordial relationship envisaged in Article 187:** Sharing of functions and resources transfer should be based on cordial sharing of resources envisaged in Article 187 and 202(2) of the constitution.

After consideration of all these matters, the vertical distribution of nationally raised resources is set out as follows:

(a) **National Government:** Out of the estimated shareable revenues amounting to Ksh.1,026.31 billion, a total of Ksh.799.65 billion is allocated to the national government.
   (i) Equalization Fund, Ksh. 3.4 billion;
   (ii) Provision of Kshs. 5 million per constituency toward completion of centres of excellence under the Economic Stimulus Package, that is a total of Ksh 1.45 billion;
   (iii) Conditional allocation for Level 5 hospitals, Kshs. 1.87 billion

(b) The county allocation will amount to Ksh.226.66 billion, which is 43 % of recent audited revenues approved by National Assembly. These figures have been arrived at taking into account Article 202 and 203 of the constitution, revenue growth for 2013/14 and 2014/15, and the allocations to counties for 2013/14.

(c) Given the amount of resources allocated to counties, constitutional provision of Article 203 (2) which requires county governments be allocated not less than 15 per cent of the revenue raised by the national government based on the last audited revenues approved by the National Assembly, has been met.

(d) The county allocation of Ksh. 226.66 billion reflects a growth of 19.3% over the Ksh. 190 billion allocated to counties in 2013/14. The national share rises by only 9.4% during the same period (that is, from Ksh. 730.4 billion in 2013/14 to Ksh. 799.65 billion in 2014/15). The growth of county allocation not only exceeds the projected revenue growth, but also is far much higher than the growth of the national government's share during the same period. The enhanced allocation will ensure that county governments are able to cover their development needs and the cost of the new salaries approved by the Salary and Remuneration Commission, and related personnel costs.

II. Evaluation of the Bill against Article 203 (1) of the Constitution

Article 218 (2) (b) of the Constitution requires that a Division of Revenue Bill be accompanied by a memorandum that explains how the provisions of Article 203 (1) of the Constitution have been taken into account in the Bill. In this section, an assessment of the extent to which the requirements of Article 203 (1) have been incorporated in the Division of Revenue Bill, 2014 is undertaken.

The amounts shown in Table 1 are drawn from the national government ceilings set out in the Schedule to the Budget and Appropriations Committee Report on the Budget Policy Statement, 2014 which was adopted by the National Assembly on 20th March, 2014. The requirements of the national government exceed its own revenue share, which means that the deficit will be covered through Appropriations in Aid, loans and grants.

(a) National Interest

Table 1 lists some of the functions that fall under the category of national interest. These include: national defence services, the National Intelligence Services (NIS), police services, judicial services, national elections and parliamentary services as well as other national services rendered by various government ministries, constitutional commissions and independent offices. The total amount for the national needs amount to Ksh. 1,139.9 billion. This will be financed through the national revenue share of Ksh. 799.65 billion, foreign financing and Appropriations-in-Aid.

(b) Public Debt and Other National Obligations

The Bill has fully provided for all debt related costs as well as other national obligations mandated by the Constitution such as pension contributions, salaries for constitutional office holders and contributions to international organizations. In 2014/15, the allocation for public debt and other national obligations is Ksh. 414.4 billion, up from Ksh. 381.5 billion in 2013/14.

(c) Fiscal Capacity and Efficiency of County Governments

Fiscal capacity for county governments, that is, the potential revenues that can be generated from the tax bases assigned to the counties when a standard average level of effort is applied to those tax bases, has not been assessed. It is still early to measure county governments' fiscal efficiency. Despite the reports of the Controller of Budget and Auditor General, there is no sufficient official data on county fiscal capacity and efficiency owing to the fact that county governments are fairly new and therefore, this criterion has not been taken into account in the determination of the division of revenue between the national and county governments.

(d) County governments' ability to perform the functions assigned to them and meet other developmental needs of the county governments

In determining the vertical allocation of revenue for the county governments, the imputed cost of the functions transferred to counties was used as a guideline for the initial equitable share allocation of Ksh. 190 billion in 2013/14. The real costing of the functions to counties and the costing of needs is yet to be determined. The total resources available to counties (Ksh. 226.66 billion) will fairly help counties perform their functions and meet required developmental needs. Any deficiencies will be considered under the auspices of Intergovernmental Relations Act, and Article 187 of the constitution.

(e) Economic Disparities within and among counties and the need to remedy them

Allocation of the sharable revenue (i.e. county allocation of Ksh. 226.66 billion) among counties is based on the formula approved by Parliament which takes into account disparities among counties and aims at equitable distribution of resources. The formula takes into account population (45%), land area (8%), poverty (20%), a basic equal share (25%), and fiscal responsibility (2%). Ksh. 3.4 billion has been set aside for the Equalization Fund in 2014/15. This Fund will be used to finance development programmes that aim to reduce regional disparities among counties.

(f) Need for Economic Optimization of Each County

The critical principle in the revenue allocations was the need to achieve economic efficiency within hard budget constraints or limited resources in the face of limited tax resources. This is achieved by ensuring that each county receives substantial resources under the equitable share compared to the 2013/14 allocation. Equitable revenue share to counties will rise by an average of 15% growth rate. Together with conditional allocations, each county government will have its own discretionary resources which each county can allocate to its priority developmental programs. County governments will therefore be able to optimise on their economic development programmes by channelling their resources to high priority areas.

(g) Stable and Predictable Allocations of County Governments' Vertical Share of Revenue

Need to ensure stable and predictable revenue allocations between the levels of government and particularly to counties is a critical principle of the 2014/15 allocations. Apart from the fact that allocations to counties exceed estimated revenue growth, the county governments' equitable share of revenue raised nationally has been protected from cuts that may be necessitated by a shortfall in the collections of ordinary revenue (Clause 5 of the bill). In addition, the county governments are assured of getting at least the same amount allocated the previous year which, therefore, enhances predictability.

(h) Need for Flexibility in Responding to Emergencies and Other Temporary Needs

Included in the equitable share of revenue for the national government is an allocation of Ksh. 5 billion for the Contingencies Fund. This Fund will be used to meet the demands arising from urgent and unforeseen needs in all Counties that suffer from calamities in the manner contemplated under Section 21 of the Public Finance Management Act, 2012. In addition, the Public Finance Management Act, 2012 requires each county government to set up a County Emergency Fund. County governments are expected to set aside part of their resource allocation for this purpose.

Table 1: Evaluation of Revenue Allocation in Relation to Article 203 (1) of the Constitution (Ksh. billions)

	BUDGET ITEM	2014/15
A	**Ordinary Revenue (excluding AIA)/Shareable revenue**	**1,026.31**
B	**National Interest [Article 203 (1)(a)]**	**1,139.92**
	1. Defence and NIS	79.46
	2. Parliament	25.80
	3. Judiciary	17.0
	4. Presidency	4.38
	5. Office of the Attorney General Office & Department of Justice	2.98
	6. DPP	2.48
	7. Police Services	67.51
	8. Teachers Service Commission	160.77
	9. Other Constitutional Commissions and Independent offices	11.90

	10. Elections	3.78
	11. Other National Services	76.39
C	**Public Debt and Other Obligations (Article 203 [1][b])**	**414.39**
	1. Debt Payment	353.48
	2. Pensions, constitutional salaries & other	60.91
D	**Emergencies [Article 203 (1)(k)]**	**5.0**
E	**Equalisation Fund [Article 203 (1) (g) and (h)]**	**3.4**
F	**County Allocations [Article 203 (1) (f)}]**	**226.66**

III. Explanation on the Deviations from the Recommendations of the Commission on Revenue Allocation

There are several significant deviations in the bill with the CRA's recommendations on the division of revenue between the national and county governments for the financial year 2014/15. The differences stem from the different approaches or principles used in the computation of the equitable revenue shares and the actual amounts allocated.

(a) **Allocations to each level of government:** The Commission on Revenue Allocation has proposed revenue allocation to counties of Ksh. 279.1 billion in financial year 2014/15. This is approximately 53% of most recent audited revenue approved by National Assembly. The bill instead allocates Ksh. 226.66 billion to counties, or 43% of the said revenue. The differences arise from the approaches used in determining the resources for counties. The resources to counties as contained in the bill are based on average revenue growth, while those by the CRA are based on forward estimates of expenditure (2014/15) contained in the printed estimates of 2012/13 (before counties were fully in place). That approach is not current or realistic given that the expenditure estimates for 2013/14 for National government are available and that the counties already received Ksh. 190 billion in 2013/14.

(b) **Adherence to the county allocations threshold set in the Article 203(2) of the constitution by applying the correct audited accounts approved by National Assembly in line with Article 203(2).** The CRA uses 2011/12 revenues while the bill uses the recently approved revenues of 2009/10 financial year. Consequently, the bill shows that the allocation to counties is 43% of revenues receipts of 2009/10.

(c) **Costing of functions:** In absence of proper costing of functions, the bills applies revenue growth as a basis for revenue allocation together with other factors so as to ensure stability of allocations to each level of government. However, CRA uses ad hoc unbundling of forecasted allocations to national government using, as a baseline, the forward year (2014/15) of the Printed Estimates of Recurrent and Development Expenditure for 2012/13. This baseline may not be appropriate since it is dated and budgets change from year to year. It, therefore, does not reflect the most recent changes in national policy and the economy. The CRA approach ignores the revenue allocations for 2013/14 as the basis for future allocations, hence moving away from the need to ensure stability and predictability of revenue allocations for both levels of government. It is further that the noted an attempt to cost some of the services of county governments is inadequate. For example, CRA's costing of the new administrative structures is overstated. The CRA estimates that the additional cost of new administrative structures at the county level will be Ksh. 48.3 billion, comprising of Ksh. 38.1 billion for remuneration and Ksh.. 10.1 billion for other administrative costs.

(d) **Adherence to criteria set out in Article 203(1):** The bill clearly takes into account the needs of the national government and those of counties in determining the allocations to each level of government. In Contrast, the CRA approach first estimates the county allocations and obtains the national government allocation as a residual. By not taking into account the Criteria in Article 203(1) of the Constitution, some functions of the national government are likely to remain unfunded or underfunded.

(e) **Determination of conditional or unconditional allocations (Article 202(2)):** The constitution allows the national government to allocate resources to counties from its own revenue share as conditional or unconditional allocations. The bill does not incorporate conditional or unconditional allocations, rather the bill provides total county allocations for sharing in accordance with the County Allocation of Revenue Act.

IV. Explanation on How the Bill deviates from the Resolution of the House on the Budget Policy Statement, 2014

The Bill deviates from the resolution of the National Assembly on the Budget Policy Statement, 2014 in the following ways:

a) **Allocation to County governments:** The allocation to counties is Ksh. 226.66 billion.

b) **Allocation to National Government;** The allocation for national government declines from Ksh. 808.4 billion to Ksh. 799.65 billion on account of increased amount to county governments.

c) **Allocation to REA:** The allocation to REA is not shown under the National Allocation in the Bill. Instead, the amount of Ksh. 7.3 billion which was contained in the House Resolution as part of National government revenue share is divided equally among the two levels of government since rural electrification is a shared function. Consequently, Ksh. 3.65 billion is shown as part of the County Allocation in the Schedule to the Bill, while the remaining half, Ksh. 3.65 billion for REA, remains as part of the "National Allocation".

d) **Conditional Allocations:** the bill provides for an amount set out as "Conditional Allocations" to Level 5 Hospitals and the Economic Stimulus Package. The "County Allocation" will be shared upon the enactment of the County Allocation of Revenue Bill, 2014. The initial spirit of the Houses with regard to providing specific resources for priority services, which include level 5 hospitals, is echoed in the Bill as shown in the Schedule.

I certify that this printed impression is a true copy of the Bill passed by the Senate on the ...., 2014.

Clerk of the Senate

Endorsed for presentation to the National Assembly in accordance with the provisions of Standing Order 160 of the Senate Standing Orders.

Speaker of the Senate