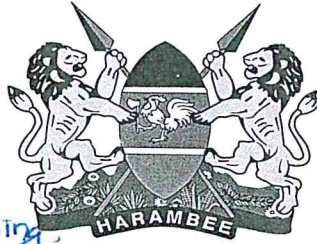


REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

TWELFTH PARLIAMENT

Hon. Speaker
Recommended for
approval for tabling
16/07/19

Approved
16/07/2019

REPORT OF THE STANDING COMMITTEE ON FINANCE AND BUDGET

ON

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2019

PAPERS LAID	
DATE	11/07/2019
TABLED BY	Leonardson, Committee on Finance
COMMITTEE	
CLERK AT THE TABLE	Mitchell Ochi

CLERK CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI

JULY 2019

Table of Contents

PREFACE.....	3
Mandate and Functions of the Committee.....	3
BACKGROUND AND EXECUTIVE SUMMARY.....	5
CHAPTER ONE.....	8
INTRODUCTION.....	8
CHAPTER TWO.....	9
SUBMISSIONS FROM STAKEHOLDERS AND MEMBERS OF THE PUBLIC.....	9
CHAPTER THREE.....	18
COMMITTEE OBSERVATIONS AND RECOMMENDATIONS.....	18
Observations.....	18
Recommendations.....	18

PREFACE

Mandate and Functions of the Committee

Article 124 of the Constitution of Kenya 2010, provides for the establishment of committees by either House of Parliament. Committees are central to the workings, roles and functions of Parliament as set out in Article 94 and more specifically in Article 96 of the Constitution as regards the Senate.

Parliamentary committees consider policy issues, scrutinize the workings and expenditure of the national and county governments and examine proposals for legislation. The roles of committees are twofold, investigative process and deliberative process. The end results of these processes are reports to the House in plenary on inquiry of certain issues under the mandate of a particular committee.

The Standing Committee on Finance and Budget is established pursuant Section 8 of the Public Finance Management Act, 2012 and standing order 218(3) of the Senate Standing Orders and is mandated to -

- a) *To investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to examine –*
 - i) *the Budget Policy Statement presented to the Senate;*
 - ii) *report on the Budget allocated to Constitutional Commissions and independent offices;*
 - iii) *the Division of Revenue Bill, County Allocation of Revenue Bill, and cash disbursement schedule for county governments.*
 - iv) *To consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance and monetary policies and public debt, planning and development policy.*
- b) *To pursuant to Article 228 (6) of the Constitution, to examine the report of the Controller of Budget on the implementation of the budgets of county governments.*

Membership of the Committee

The Committee was constituted by the House on Thursday 14th December, 2017, during the First Session of the Twelfth (12th) Parliament. The Committee as currently constituted, comprises the following Members-

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
3. Sen. Wetang'ula Moses Masika, EGH, MP - Member
4. Sen. Aaron Cheruiyot, MP - Member
5. Sen. Mutula Kilonzo Junior, MP - Member
6. Sen. (Dr.) Ali Abdullahi Ibrahim, CBS, MP - Member
7. Sen. (Dr) Rose Nyamunga, MP - Member
8. Sen. Boniface Mutinda Kabaka, MP - Member
9. Sen. CPA Farhiya Haji, MP - Member

BACKGROUND AND EXECUTIVE SUMMARY

The Public Finance Management (Amendment) Bill, 2019 was sponsored by the Chairperson of the Finance and Budget Committee Senator (Dr.) Agnes Zani, MP.

The Bill was published on 15th April, 2019 and subsequently tabled in the House for First Reading on 21st May, 2019 and thereafter committed to the Standing Committee on Finance and Budget for consideration pursuant to standing order 140(1) of the Senate Standing Orders.

The Bill seeks to amend the Public Finance Management Act, No. 18 of 2012 to ensure county treasuries design, develop and implement county revenue collection system.

The Committee considered the Bill and resolved to subject it to public hearings pursuant to Article 118 of the Constitution and Standing Order 140 (5). The Committee invited submissions from members of the public via advertisements on the daily newspapers. The Committee also invited the Council of County Governors, County Assembly Forum, Commission on Revenue Allocation, Controller of Budget and the National Treasury.

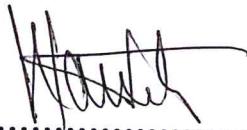
The Committee recommends that the House approves the Bill with amendments.

ACKNOWLEDGEMENTS

The Committee acknowledges the National Treasury, Commission on Revenue Allocation, Office of the Controller of Budget, Institute of Certified Public Accountants of Kenya (ICPAK) and members of the public who made insightful contributions and recommendations to the Bill.

In addition, the Committee thanks the Offices of the Speaker and Clerk of the Senate for the support extended to the Committee in execution of its mandate. Appreciations to all Members of the Committee for their patience, sacrifice and commitment to public service, which enabled the Committee complete the assigned task.

It is now my pleasant duty and privilege, on behalf of the Standing Committee on Finance and Budget, to present to the Senate, this Report of the Committee on the Public Finance Management (Amendment) Bill, 2019.



SIGNED:

SEN. (ENG) MOHAMED M. MAHAMUD, CBS, M.P.

(CHAIRPERSON, STANDING COMMITTEE ON FINANCE AND BUDGET)

Date: 16/7/2019

ADOPTION OF REPORT

Pursuant to standing order 213 (2) the Finance and Budget Committee considered the report on the Public Finance Management (Amendment) Bill, 2019 and adopted it as follows-

Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson 

Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson _____

Sen. Wetang'ula Moses Masika, EGH, MP - Member Wetang'ula

Sen. Mutula Kilonzo Junior, MP - Member _____

Sen. Aaron Cheruiyot, MP - Member _____

Sen. (Dr.) Ali Abdullahi Ibrahim, CBS, MP - Member 

Sen. (Dr) Rose Nyamunga, MP - Member 

Sen. CPA Farhiya Haji, MP - Member 

Sen. Boniface Mutinda Kabaka, MP - Member 

CHAPTER ONE

INTRODUCTION

The Public Finance Management (Amendment) Bill, 2019 seeks to amend the Public Finance Management Act No. 18 of 2012. The Bill provides that every county treasury shall design, develop and implement county revenue collection system.

The Bill proposes to amend the Public Finance Management Act by inserting new sections 160A, 160B and 160C.

The proposed new section 160A requires the county treasury, in consult with the National Treasury and the Kenya Revenue Authority, to put in place a county revenue collection system. It requires that such a system shall respect the distinctiveness of the two levels of government, be secure, effective, efficient and transparent.

The proposed new section 160B on provides for reporting on the status of revenue collection at the county. It requires the county treasury to report bi-annually to the county assembly and submit copies of the reports to the Senate, the National Treasury and the Commission on Revenue Allocation on the status of county revenue collection and performance.

The proposed new section 160C requires the county executive committee member to operationalize a county revenue collection system within a period of two from the coming into force of the Act. It also provides for penalty in case of failure to operationalize the county revenue collection system or prepare and submit bi-annual statements or an annual report.

The bill aims to promote ease of collection and accountability of county governments own source revenue. The system would ensure effective and efficient revenue collection and management.

CHAPTER TWO

SUBMISSIONS FROM STAKEHOLDERS AND MEMBERS OF THE PUBLIC

As a constitutional imperative and pursuant to standing orders 140(5), the Committee facilitated public participation on the Bill. This chapter highlights the observations and recommendations submitted during the public hearings held on Thursday, 20th June, 2019 as stipulated in Table below. The stakeholders include: Controller of Budget, the Commission on Revenue Allocation, Institute of Certified Accountants of Kenya, National Treasury and Planning, and Ms. Vivienne Taa a member of the public.

The stakeholders considered provisions in the Public Finance Management (Amendment) Bill, 2019 and the summary is as follows-

NO	STAKEHOLDER	ISSUE OF CONCERN	OBSERVATIONS/ RECOMMENDATIONS
1.	Controller of Budget	Public Finance Management (Amendment) Bill, 2019	<p>Section 12 (1) (e) of the Public Finance Management Act, 2012 (PFMA), the National Treasury has been mandated to design and prescribe a financial management system for national and county governments to ensure transparent financial management and standard financial reporting. The National Treasury has designated the Integrated Financial Management Information System (IFMIS) as the financial system contemplated under Section 12 (1) (e) of the PFMA</p> <p>Recommends: In light of the principles of prudence and fiscal responsibility under Article 201 (d) of the Constitution, the already prescribed financial management system which is IFMIS should be modified to include: a Revenue Collection Module. The module can then be customised to fit</p>

NO	STAKEHOLDER	ISSUE OF CONCERN	OBSERVATIONS/ RECOMMENDATIONS
			<p>the needs of each particular County. This will have the benefit of ensuring standardization and uniformity across the Counties.</p>
2.	<p>Commission on Revenue Allocation (CRA)</p>	<p>Clause 160 A. County Revenue Collection System:-The amendment under sub-clause (1) provides that Every County shall in consultation with the National Treasury and the Kenya Revenue Authority, design, develop and implement county revenue collection system.</p>	<p>The wording of this clause leans on unconstitutionality due to the use of the word shall in the sense that it makes it mandatory for the counties to consult National Treasury and Kenya Revenue Authority for a mandate that is constitutionally theirs as regards County revenue under Article 209 of the Constitution. This will align with Articles 209 and 216 of the Constitution and Section 160 of the PFMA</p> <p>CRA in making its recommendations is required under Article 216 (3) (b) to when appropriate, define and enhance the revenue sources of the national and county governments and also encourage fiscal responsibility yet it is omitted in the aforementioned clause.</p> <p>The Clause also contradicts the very law it seeks to amend more so Section 160 of the PFMA which makes it optional for counties to authorise KRA as a revenue collector, this clause makes it mandatory to involve KRA</p> <p>Recommends:</p> <p>Delete the word shall before National Treasury and Kenya Revenue Authority</p>

NO	STAKEHOLDER	ISSUE OF CONCERN	OBSERVATIONS/ RECOMMENDATIONS
			<p>and substitute with the word may to make the consultations optional</p> <p>Add the Commission on Revenue Allocation as part of the entities to be consulted with in development system and also as one of the entities under sub-clause (3) to assist in developing technical capacities to the county treasuries</p> <p>Add “replace” after the word “develop”</p>
		<p>Clause 160 B. Reporting on county revenue collection and performance:-Provides for bi-annuals statements by County Treasury on County Revenue Collection and performance to County Assemblies, Senate, National Treasury and CRA.</p>	<p>This appears to be a duplication of Section 158 of the PFMA that requires the county receiver of revenue to issue reports that appear to be similar in content to the ones envisioned under this clause. The recipient of the statements is also similar except Senate and County Assemblies.</p> <p>Recommends:</p> <p>Delete this provision and add the missing recipients to Section 58 of the PFMA i.e County Assemblies and Senate.</p>
3.	<p>Institute of Certified Accountants of Kenya (ICPAK)</p>	<p>160A) Every County Treasury shall, in consultation with the National Treasury and the Kenya Revenue Authority, design, develop and implement a county revenue collection system.</p>	<p>The provision for establishment of revenue collection system by every county will lead to adoption of different systems that could defeat the purpose of a unified revenue collection system that would be integrated with the national government revenue collection system.</p>

NO	STAKEHOLDER	ISSUE OF CONCERN	OBSERVATIONS/ RECOMMENDATIONS
			<p>Currently, counties and the national government utilize eleven different systems which is blamed for the low levels of revenue collection, mismanagement and duplicity among other challenges</p> <p>Recommends: Amend to read</p> <p>Every County Treasury shall adopt and implement an integrated revenue collection system designed in collaboration with the National Treasury and the Kenya Revenue Authority. To cure the inadequacies and loopholes in revenue collection among the 47 counties. This will further eliminate duplication of efforts and wastage of resources.</p>
		<p>160B (2) The County Treasury shall submit copies of the biannual statements and an annual report to the Senate, the National Treasury and the Commission on Revenue Allocation. In preparing the bi-annual statements and the annual report referred under subsection</p> <p>the County Treasury shall ensure that the statements and report contain</p>	<p>PFM County Regulations 2015, under Regulation 54(1) require the county accounting officers to prepare monthly financial and non-financial budgetary reports and submit to county Treasury, Controller of Budget and Auditor General.</p> <p>The proposed amendments fails to recognize the role the Controller of Budget and Auditor General play in over sighting and reporting county financial state.</p> <p>Given that the Controller of Budget prepares quarterly County Budget Implementation</p>

NO	STAKEHOLDER	ISSUE OF CONCERN	OBSERVATIONS/ RECOMMENDATIONS
		information on the financial and non-financial performance of the county revenue collection.	Review Reports, it would be prudent that both the Controller of Budget report and County Treasury reports to the Senate, National Treasury and CRA in tandem. Recommends: Amend to read (2) The County Treasury shall submit copies of the quarterly statements and an annual report to the Senate, the National Treasury the Commission on Revenue Allocation, Controller of Budget and Auditor General. To enhance oversight and verification of generated data.
		160C. (1) The county executive committee member for finance shall, within a period of two years from the coming into force of this Act, ensure that the county revenue collection system referred under section 160A(1) is operational	The transition period provided is too long to address the challenges identified. Recommends: Amend to read The county executive committee member for finance shall, within a period of one year from the coming into force of this Act, ensure that the county revenue collection system referred under section 160 A (1) of the PFMA is operational. This will provide an ample notice to amend existing contractual agreements in line with intended reforms.
4.	National Treasury and Planning	Public Finance Management (Amendment) Bill, 2019	The National Policy to Support enhancement of County Governments' Own-Source Revenue already provides a standardized

NO	STAKEHOLDER	ISSUE OF CONCERN	OBSERVATIONS/ RECOMMENDATIONS
			<p>framework for local revenue measures by Counties. For instance, the Policy framework requires Counties to underpin their own source revenue measures with requisite policies and legislation; adopt more efficient revenue administration approaches (e.g deployment of qualified personnel and implementation of appropriate institutional arrangements) and use realistic revenue estimates in their annual budgets.</p> <p>In addition and of direct relevance to the Bill, the Policy requires Counties to adopt and implement the standardised revenue collection and management system that is to be developed by the National Treasury.</p> <p>Article 190 (2) of the Constitution to only use financial management systems that comply with requirements prescribed through national legislation; and the National Treasury is mandated in Section 12 (1)(e) of the PFMA, 2012 , to design and prescribe a financial management system for both levels of government.</p> <p>The National Policy to Support Enhancement of County Governments' Own-Source Revenue aims to achieve efficiency, enhance good governance practises and promote transparency in counties' revenue administration processes.</p>

NO	STAKEHOLDER	ISSUE OF CONCERN	OBSERVATIONS/ RECOMMENDATIONS
			<p>The National Treasury has already launched a process to develop a single revenue collection system that will be used by all County Governments, which will be integrated with National Government systems. Development of this system is an activity under the on-going implementation of the above mentioned Policy. Development of this system is pursuant to the February 7th, 2019 Presidential directive, which requires the National Treasury to collaborate with KRA, the CRA and the Council of Governors in constituting a multi-agency taskforce for this purpose.</p> <p>The taskforce which was constituted on February 20th, 2019, with the inclusion of the Ministry of ICT, the Central Bank of Kenya and the Controller of Budget is already considering options towards an integrated County revenue management solution. As per the afore-mentioned Policy, the solution ultimately arrived at should permit seamless connectivity with the IFMIS and also be able to each sub-County and wards levels, especially in geographically expansive Counties.</p>
5.		County Government Revenue Collection System	Any new system that requires customization and implementation in each of the 47

NO	STAKEHOLDER	ISSUE OF CONCERN	OBSERVATIONS/ RECOMMENDATIONS
	<p>Ms. Vivienne Taa a member of the public</p>		<p>Counties will no doubt be a costly affair that would take time to test, train, implement and successfully roll-out. This is spending time, money and resources on a new revenue collection system the best way of going about this, given our current national budget deficit and debt burden?</p> <p>Recommends:</p> <p>The Kenya Revenue Authority [KRA] has over the years developed the competence and capacity to collect taxes efficiently, simply, securely and effectively. In essence, meeting all the criteria of the proposed county revenue collection system. Since the Public Finance Management Act currently allows for county governments to appoint KRA to collect revenue on behalf of the county on an agency basis, this option should be adopted instead of a new system.</p>
		<p>Reporting on County Revenue Collection and Performance</p>	<p>If county government revenue collection is assigned to the Kenya Revenue Authority on an agency basis, the proposed insertion of section 160B and 160C to the Public Finance Management (Amendment) Bill 2019 will be unnecessary.</p> <p>KRA will be responsible for preparing and submitting monthly, bi-annual and annual revenue collection statements and reports based on the Memorandum o</p>

NO	STAKEHOLDER	ISSUE OF CONCERN	OBSERVATIONS/ RECOMMENDATIONS
			<p>Understanding with the county governments.</p> <p>Therefore design development and implementation of a new system county revenue collection system ceases to be milestone upon which National Treasury may stop the transfer of a county's share of revenue raised by the national government.</p>

CHAPTER THREE

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

Observations

The Committee made the following observations on the Bill-

- a) that there was need to design and develop one revenue collection system for county treasuries to adopt.
- b) That every county treasury should adopt the revenue collection system developed and customize to the needs of the county.
- c) That in case of failure to adopt the system, within a period of one year (1), the Senate should investigate and recommend stoppage of funds pursuant to Article 225(3) of the Constitution.

Recommendations

The Committee recommends the following amendments to the bill-

Clause 2

160A(1) should be replaced with the following:

- (i) the National Treasury, in consultation with Council of County Governors, Commission on Revenue Allocation and Kenya Revenue Authority, shall design and develop a county revenue collection system.

Introduce a new (1A) to read as follows-

- (ii) Every county treasury shall adopt and implement the revenue collection system developed in (i) above with some modifications depending with the nature of its revenue streams.

160B(2) include the office of Controller of Budget and Auditor General as the recipient of the bi-annual statements.

160C(1) should be amended to allow the county executive committee member for finance to operationalize the revenue collection system within one year.

160C(2) should be amended to allow the Senate to recommend stoppage of funds pursuant to Article 225(3) of the Constitution in case of failure to adopt and implement the system.

REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
FINANCE-NAIROBI
Fax No.: 330426
Telephone: 2259922
When replying please quote



P.O. Box 30007
NAIROBI
KENYA

Ref No. IGFR/SC/FB/01/B(3)

24th June, 2019

Mr. Jeremiah M. Nyegenye, CBS

Clerk of the Senate
Clerk's Chambers, The Senate
Parliament Buildings
P. O. Box 41842

NAIROBI

Dear

Mr. Nyegenye

② Dlam
Kindly deal.
Eg
28/06/19

① DC (EG)
Please deal.
28/06/19
③ Clerk Assisist
Finance Commi
Please deal
9/07/19

RE: PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, (SENATE BILLS NO. 3 OF 2019)

Reference is made to your letter dated June 11th, 2019 [Ref: SEN/DCS/SCF&B/2019/39] on the above subject.

Our understanding is that the principal objective of the Public Finance Management (Amendment) Bill, (Senate Bills No. 3 of 2019) is to establish a collaborative framework for collection of revenues by County Governments and the National Treasury, together with the Kenya Revenue Authority (KRA). Accordingly, the Bill proposes:

- that County Treasuries be legally required to consult with the National Treasury and the KRA for the purpose of putting in place County revenue collection systems, which are secure, effective, efficient and transparent;
- that County Executive Committee Members for Finance be required to operationalize the above system within two (2) years of the Act coming into force; and,
- that County Treasuries prepare and submit to County Assemblies -- copying the Senate, the National Treasury and the Commission on Revenue Allocation (CRA) bi-annual statements as well as annual reports, containing financial and non-financial information on the status of revenue collection and performance.

It is also our understanding that the intention of the above proposed legislative intervention is to boost County Governments' revenue collection and ensure

accountability; and further, that Counties failing to develop and implement a revenue collection system as prescribed in the Bill, or report on their revenue performance are to be dealt with in accordance with Article 225(3) of the Constitution.

Having carefully studied the proposed amendments to the PFM Act, 2012, the National Treasury wishes to make two broad comments for consideration by the Senate Standing Committee on Finance and Budget:

Firstly, that the *National Policy to Support Enhancement of County Governments' Own-Source Revenue* already provides a standardized framework for local revenue measures by the Counties. For instance, the Policy framework requires Counties to underpin their own-source revenue measures with requisite policies and legislation; adopt more efficient revenue administration approaches (e.g. deployment of qualified personnel and implementation of appropriate institutional arrangements, etc.) and use realistic revenue estimates in their annual budgets. In addition -- and of direct relevance to the current Senate Bill -- the Policy requires Counties to adopt and implement the standardized revenue collection and management system that is to be developed by the National Treasury. As you are aware, Counties are obliged in Article 190(2) of the Constitution to only use financial management systems that comply with requirements prescribed through national legislation; and the National Treasury is mandated in section 12(1)(e) of the PFM Act, 2012, to design and prescribe a financial management system for both levels of Government. In general, you may note that among other things, the National Policy to Support Enhancement of County Governments' Own-Source Revenue aims to achieve efficiency, enhance good governance practices and promote transparency in Counties' revenue administration processes.

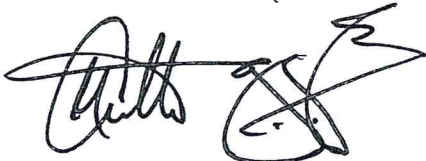
Secondly, that the National Treasury has already launched a process to develop a single revenue collection system that will be used by all County Governments, which will be integrated with National Government systems. Development of this system is an activity under the ongoing implementation of the above-mentioned Policy. Importantly too, development of this system is pursuant to the February 7th, 2019 Presidential directive, which requires the National Treasury to collaborate with the KRA, the CRA and the Council of Governors (CoG) in constituting a multi-agency taskforce for this purpose. The taskforce, which was constituted on February 20th, 2019 -- with the inclusion of Ministry of ICT, the Central Bank of Kenya (CBK) and the Controller of Budget (CoB) -- is already considering options towards an integrated County revenue management solution. As per the afore-mentioned Policy, the solution

ultimately arrived at should permit seamless connectivity with the IFMIS and also be able to reach sub-County and Ward levels, especially in geographically expansive Counties.

We hope that the Committee will find the above comments useful in its deliberations on the way forward with the PFM (Amendment) Bill, and we will be happy to provide further clarity or any additional information that might be required.

Yours

Sincerely



DR. KAMAU THUGGE, CBS
PRINCIPAL SECRETARY/NATIONAL TREASURY

Copy to: CS/National Treasury and Planning

Tel: 254 (20) 4298000
Fax: 254 (20) 4298251
Email: info@crakenya.org
Website: www.crakenya.org



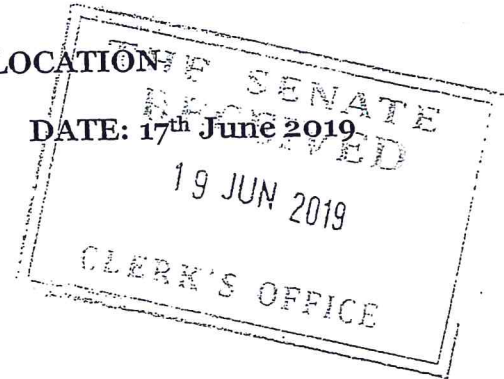
14 Riverside Drive
Grosvenor block
2nd Floor
P.O. Box 1310 – 00200
NAIROBI

COMMISSION ON REVENUE ALLOCATION

OUR REF: CRA/CSO/P&S/11/Vol.III (07)

Mr. Jeremiah M. Nyegenye, CBS
Clerk of the Senate
Parliament Buildings
NAIROBI

DATE: 17th June 2019



Dear Mr. Nyegenye

**RE: MEMORANDUM ON THE PUBLIC FINANCE
MANAGEMENT (AMENDMNET) BILL, 2019**

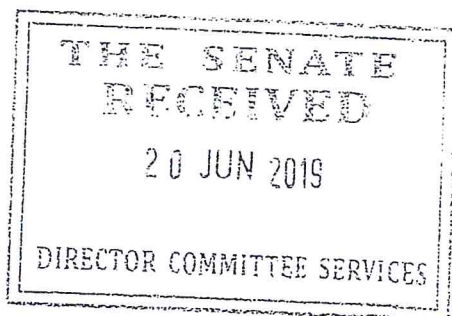
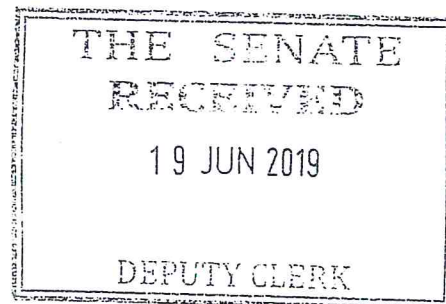
We refer to the above subject and your letter of 11th June, 2019 whose contents we have noted.

In view of your letter and the Commission's constitutional mandate to make recommendations to the National Assembly and Senate when any Bill containing provisions dealing with the sharing of revenue, or any financial matter concerning county governments is published, please find our enclosed memorandum touching on several provisions in the Public Finance Management (Amendment) Bill, 2019 for your consideration.

Yours Sincerely,



George Ooko

COMMISSION SECRETARY/CEO




① DCom

For the Committee


19/06/19

② PCA - For Budget

For the Committee


20/06/19

Tel: 254 (20) 4298000
Fax: 254 (20) 4298251
Email: info@crakenya.org
Website: www.crakenya.org

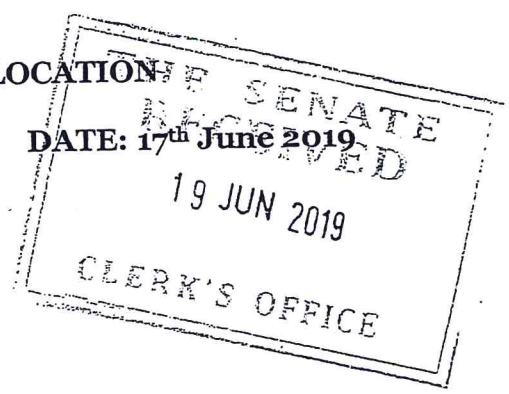


14 Riverside Drive
Grosvenor block
2nd Floor
P.O. Box 1310 – 00200
NAIROBI

COMMISSION ON REVENUE ALLOCATION

OUR REF: CRA/CSO/P&S/11/Vol.III (07)

Mr. Jeremiah M. Nyegenye, CBS
Clerk of the Senate
Parliament Buildings
NAIROBI



Dear Mr. Nyegenye

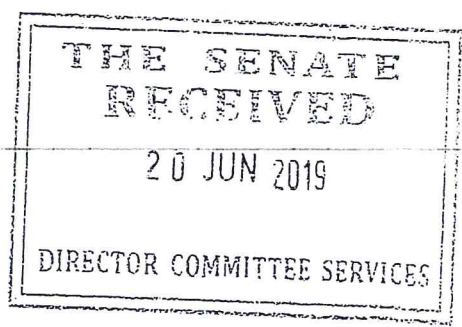
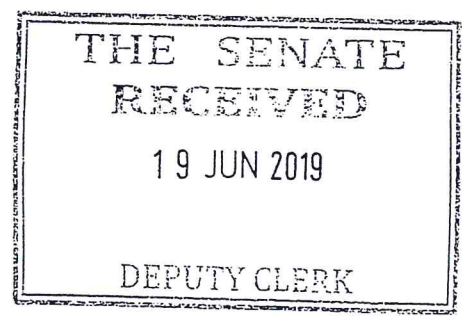
**RE: MEMORANDUM ON THE PUBLIC FINANCE
MANAGEMENT (AMENDMNET) BILL, 2019**

We refer to the above subject and your letter of 11th June, 2019 whose contents we have noted.

In view of your letter and the Commission's constitutional mandate to make recommendations to the National Assembly and Senate when any Bill containing provisions dealing with the sharing of revenue, or any financial matter concerning county governments is published, please find our enclosed memorandum touching on several provisions in the Public Finance Management (Amendment) Bill, 2019 for your consideration.

Yours Sincerely,

George Ooko
COMMISSION SECRETARY/CEO



① DCom

For the Committee.

Eg
19/06/19

② PCA - For Budget
For the Committee
20/06/19

A. Constitutional Basis of our memorandum

This memorandum is premised on Chapter 12 of the Constitution, Articles 205(1), 209(5) and 216(2).

1. Of special reference, is Article 205(1), which spells out the requirement to make recommendations to Parliament “(1) When a Bill that includes provisions dealing with the sharing of revenue, or any financial matter concerning county governments is published, the Commission on Revenue Allocation shall consider those provisions and may make recommendations to the National Assembly and the Senate

AND

2. Article 205(2), which states that these recommendations shall be tabled in Parliament, and each house shall consider the recommendations before voting on the Bill.

CLAUSE BY CLAUSE ANALYSIS

Serial No.	Clause	Recommendation	Justification for Change
1.	Clause 160A. County government revenue collection system	This amendment under sub clause (1) provides- <i>(1) Every County Treasury shall, in consultation with the National Treasury and the Kenya Revenue Authority, design, develop and implement a county revenue collection system.</i> a) The wording of this clause leans on unconstitutionality due to use of the word ‘ shall ’ in the sense that it makes it mandatory for the counties to consult National Treasury and Kenya	To align with- a) article 209 on county autonomy over their revenue streams b) article 216 of the Constitution on the CRA constitutional mandate c) section 160 of the Public Finance and Management Act d) addition of the replacement aspect ensures comprehensiveness

Serial No.	Clause	Recommendation	Justification for Change
		<p>Revenue Authority for a mandate that is constitutionally theirs as regards county revenue (Article 209).</p> <p>b) In addition to the above,, CRA in making its recommendations is required under Article 216 (3)(b) to when appropriate, define and enhance the revenue sources of the national and county governments and also encourage fiscal responsibility yet it is ommitted in this clause.</p> <p>c) The clause also contradicts the very law it seeks to amend more so section 160 of the PFMA which makes it optional for counties to authorize KRA as a revenue collector, this clause it makes it mandatory to involve KRA.</p> <p>Recommendations:</p> <p>a) Delete the word 'shall' before 'National Treasury and Kenya Revenue</p>	

Serial No.	Clause	Recommendation	Justification for Change
		<p><i>Authority' and substitute it with the word 'may' to make the consultations optional.</i></p> <p><i>b) Add the Commission on Revenue Allocation as part of the entities to be consulted with in development of the system and also as one of the entities under sub clause (3) to assist in developing technical capacities to the county treasuries.</i></p> <p><i>c) Add 'replace' after the word 'develop'.</i></p>	
2.	<p>Clause 160B. Reporting on county revenue collection and performance.</p>	<p>This clause generally provides for bi annual statements by County Treasury on <u>county revenue collection</u> and performance to county assemblies, Senate, National Treasury and CRA.</p> <p>This appears to be a duplication of section 158 of the PFMA that requires the county receiver of revenue to issue reports that appear to be similar in content to the ones envisioned under this clause. The recipients of the statements are also similar except Senate and county assemblies.</p> <p>Recommendation:</p>	To avoid duplication

Serial No.	Clause	Recommendation	Justification for Change
		<i>Delete this provision and add the missing recipients to section 158 of the PFMA i.e. county assemblies and Senate</i>	



REPUBLIC OF KENYA

OFFICE OF THE CONTROLLER OF BUDGET

BIMA HOUSE, 12TH FLOOR
HARAMBEE AVENUE
Email: cob@cob.go.ke

P O BOX 35616 – 00100
NAIROBI
TEL. 2211068, 0738466721, 0709910000

Ref: COB/SEN/002/VOL.2 (3)

19th June, 2019

Mr. J. M. Nyegenye, CBS
Clerk of the Senate
Parliament
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

Dear *Mr. Nyegenye,*

**RE: COMMENTS ON THE PUBLIC FINANCE MANAGEMENT
(AMENDMENT) BILL, 2019**

The above subject matter and your letter Ref. No. SEN/DCS/SCF&B/2019/42 dated 11th June, 2019 refers.


We note that the Public Finance Management (Amendment) Bill, 2019 is intended to provide for following:

1. The amendment seeks to provide that each County Treasury in consultation with the National Treasury and Kenya Revenue Authority shall design, develop and implement a county revenue collection system.
2. The Bill sets out the basic criteria for the system e.g. it should be transparent, efficient, verifiable, easy to use, secure, respects the distinctiveness of the two levels of government.
3. The Bill also requires that a county shall submit bi-annual statements and an Annual Report on the status of the county revenue collection and performance to the County Assembly with a copy to the Senate, National Treasury and Commission on Revenue Allocation.
4. The Bill provides that the revenue collection system should be operational within two years of coming into force of the Act.
5. The Bill also provides for stoppage of funds under Article 225 (3) where a county

- (a) fails to implement a revenue collection system.
- (b) fails to report on status of county revenue collection and performance.

We have reviewed the Public Finance Management (Amendment) Bill, 2019 and comment as follows:

1. Section 12(1)(e) of the Public Finance Management Act, 2012(PFMA), the National Treasury has been mandated to design and prescribe a financial management system for national and county governments to ensure transparent financial management and standard financial reporting. The National Treasury has designated the Integrated Financial Management Information System (IFMIS) as the financial system contemplated under Section 12(1)(e) of the PFMA.
2. It is our opinion that in light of the principles of prudence and fiscal responsibility under Article 201(d) of the Constitution, the already prescribed financial management system which is IFMIS should be modified to include a Revenue Collection Module. The Module can then be customized to fit the needs of each particular County.
3. This will have the benefit of ensuring standardization and uniformity across the Counties.

Yours *Sincerely*

Agnes Odhiambo (Mrs.), CBS
CONTROLLER OF BUDGET



SUBMISSION TO THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL 2019

JUNE 2019

The Public Finance Management (Amendment) Bill 2019 the Public Finance Management Act, No. 18 of 2012 to establish a collaborative framework for collection of revenues by the county governments and the National Treasury together with the Kenya Revenue Authority. This intended boost revenue collection by des the county governments and ensure accountability. The bill provides sanctions including stoppage of transfer of a county's equitable share of revenue for failure to operationalize the county revenue collection system or prepare and submit bi-annual statements or an annual report.

ICPAK RECOMMENDATIONS

No	Area	Issue of Concern	ICPAK recommendations	Justification
1.	160A) Every County Treasury shall, in consultation with the National Treasury and the Kenya Revenue Authority, design, develop and implement a county revenue collection system.	<i>This is a welcome move towards uniform revenue collection within the country. However, the provision for establishment of revenue collection system by every county will lead to adoption of different systems that could defeat the purpose of a unified revenue collection system that would be integrated with the national</i>	Amend to read <i>Every County Treasury shall adopt and implement an integrated revenue collection system designed in collaboration with the National Treasury and the Kenya Revenue Authority.</i>	To cure the inadequacies and loopholes in revenue collection among the 47 counties. This will further eliminate duplication of efforts and wastage of resources.

No	Area	Issue of Concern	ICPAK recommendations	Justification
2.	<p>160B (2) The County Treasury shall submit copies of the bi-annual statements and an annual report to the Senate, the National Treasury and the Commission on Revenue Allocation.</p> <p>(3) In preparing the bi-annual statements and the annual report referred under subsection (1), the County Treasury shall ensure that the statements and report contain information on the financial and non-financial performance of the county revenue collection.</p>	<p>government revenue collection system. Currently, counties and the national government utilize eleven different systems which is blamed for the low levels of revenue collection, mismanagement and duplicity among other challenges.</p> <p>PFM County Regulations 2015, under Regulation 54(1) require the county accounting officers to prepare monthly financial and non-financial budgetary reports and submit to county Treasury, Controller of Budget and Auditor General.</p> <p>The proposed amendments fails to recognize the role the Controller of Budget and Auditor General play in over sighting and reporting county financial state.</p> <p>Given that the Controller of Budget prepares quarterly County Budget Implementation Review Reports, it would be prudent that both the Controller of Budget report and County Treasury reports to the</p>	<p>Amend to read (2)</p> <p><i>The County Treasury shall submit copies of the quarterly statements and an annual report to the Senate, the National Treasury the Commission on Revenue Allocation, Controller of Budget and Auditor General.</i></p>	<p>To enhance oversight and verification of generated data.</p>



No	Area	Issue of Concern	ICPAK recommendations	Justification
		Senate, National Treasury and CRA in tandem.		
3.	160C. (1) The county executive committee member for finance shall, within a period of two years from the coming into force of this Act, ensure that the county revenue collection system referred under section 160A(1) is operational.	The transition period provided is too long to address the challenges identified.	Amend to read <i>The county executive committee member for finance shall, within a period of one year from the coming into force of this Act, ensure that the county revenue collection system referred under section 160A(1) is operational.</i>	In public interest, this will provide an ample notice to amend existing contractual agreements in line with intended reforms.

CPA Rose Mwaaura

Chairman, ICPAK

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2019

REPRESENTATIONS TO SENATE
BY
VIVIENNE TAA

INTRODUCTION

1. Article 160 of the current Public Finance Management Act states that the County Executive Committee (CEC) member for finance may authorize the Kenya Revenue Authority (KRA) or appoint a collection agent to be a collector of county government revenue.
2. County governments have the responsibility over taxes with immobile and narrow bases such as property and entertainment taxes.
3. County governments are also empowered to raise revenue by imposing charges on services provided at the local level.

COUNTY GOVERNMENT REVENUE COLLECTION SYSTEM

1. The proposed bill seeks to insert a new section, 160A that would require every County Treasury to design, develop and implement a county revenue collection system in consultation with the National Treasury and the Kenya Revenue Authority.
2. The County Executive Committee member for finance is responsible for ensuring that the system efficient, effective, secure, simple and easy to use, according to the guidelines given in the bill.
3. However, any new system that requires customization and implementation in each of the 47 Counties will no doubt be a costly affair that would take time to test, train, implement and successfully roll-out.
4. Is spending time, money and resources on a new revenue collection system the best way of going about this, given our current national budget deficit and debt burden? Absolutely not!

PUBLIC FINANCE MANAGEMENT (AMANDMENT) BILL 2019:
REPRESENTATIONS BY VIVIENNE TAA

3

RECOMMENDATIONS

1. The Kenya Revenue Authority [KRA] has over the years developed the competence and capacity to collect taxes efficiently, simply, securely and effectively. In essence, meeting all the criteria of the proposed county revenue collection system.
2. Since the Public Finance Management Act currently allows for county governments to appoint KRA to collect revenue on behalf of the county on an agency basis, this option should be adopted instead of a new system.

PUBLIC FINANCE MANAGEMENT (AMANDMENT) BILL 2019:
REPRESENTATIONS BY VIVIENNE TAA

4

REPORTING ON COUNTY REVENUE COLLECTION & PERFORMANCE

1. If county government revenue collection is assigned to the Kenya Revenue Authority [KRA] on agency basis, the proposed insertion of section 160B and 160C to the Public Finance Management (Amendment) Bill 2019 will be unnecessary.
2. KRA will be responsible for preparing and submitting monthly, bi-annual and annual revenue collection statements and reports based on the Memorandum of Understanding [MOU] with the county governments.
3. Therefore design, development and implementation of a new system county revenue collection system ceases to be milestone upon which National Treasury may stop the transfer of a county's share of revenue raised by the national government.

THE END

MINUTES OF THE 89TH MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON THURSDAY, 20TH JUNE, 2019 AT SHIMBA HILLS HALL, FIRST FLOOR, KICC 9:00 AM.

PRESENT

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. CPA Farhiya Haji, MP - Member
3. Sen. (Dr) Rose Nyamunga, MP - Member
4. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP - Member

ABSENT WITH APOLOGY

1. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
2. Sen. Moses Wetangula, MP - Member
3. Sen. Aaron Cheruiyot, MP - Member
4. Sen. Mutula Kilonzo Junior, MP - Member
5. Sen. Boniface Mutinda Kabaka, MP - Member

IN-ATTENDANCE

SENATE SECRETARIAT

1. Mr. Christopher Gitonga - Clerk Assistant
2. Ms. Lucy Radoli - Legal Counsel
3. Ms. Julie Mwithiga - Fiscal Analyst
4. Mr. Elly Atamba - Research Officer
5. Mr. Stephen Nyakuti - Audio Officer

IN-ATTENDANCE

PUBLIC INSTITUTIONS/ MEMBERS OF THE PUBLIC

1. Mr. Waweru Tuti - Office of the Controller of Budget
2. Ms. Vivienne Taa - Member of Public
3. Ms. Carolyne Cherop - Member of Public

MIN. NO. 437/06/2019:

PRELIMINARIES

The Chairperson called the meeting to order at 9.25 am and there followed a word of prayer. He welcomed the Members of the Committee, stakeholders and members of the Public to the meeting.

MIN.NO. 438/06/2019:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. (Dr) Rose Nyamunga, MP and seconded by Sen. CPA Farhiya Haji, MP.

MINUTES OF THE 91ST MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON THURSDAY, 4TH JULY, 2019 AT COUNTY HALL, GROUND FLOOR BOARDROOM, PARLIAMENT BUILDINGS AT 10:00 AM.

PRESENT

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. Moses Wetangula, MP - Member
3. Sen. (Dr) Rose Nyamunga, MP - Member
4. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP - Member
5. Sen. CPA Farhiya Haji, MP - Member

ABSENT WITH APOLOGY

1. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
2. Sen. Aaron Cheruiyot, MP - Member
3. Sen. Mutula Kilonzo Junior, MP - Member
4. Sen. Boniface Mutinda Kabaka, MP - Member

IN-ATTENDANCE

1. Sen. (Dr.) Agnes Zani, MP – Sponsor of the Public Finance Management (Amendment) Bill, 2019

IN-ATTENDANCE

SENATE SECRETARIAT

1. Mr. Christopher Gitonga - Clerk Assistant
2. Ms. Lucy Radoli - Legal Counsel
3. Mr. Elly Atamba - Research Officer
4. Mr. Stephen Nyakuti - Audio Officer

MIN. NO. 446/07/2019:

PRELIMINARIES

The Chairperson called the meeting to order at 10.20 am and there followed a word of prayer.

MIN.NO. 447/07/2019:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. CPA Farhiya Haji, MP and seconded by Sen. (Dr) Ali Abdullahi Ibrahim, MP.

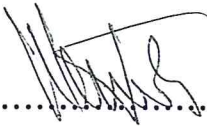
**MIN.NO. 448/07/2019: CONSIDERATION OF THE STAKEHOLDERS
SUBMISSION ON PUBLIC FINANCE MANAGEMENT
BILL, (SENATE BILLS NO. 3 OF 2019).**

The Committee considered submissions relating to-

- a) clause 2, 160A(1) and resolved that it be drafted as follows-
 - (i) the National Treasury in collaboration with Council of County Governors and Commission on Revenue Allocation shall design and develop county revenue collection system.
 - (ii) Every county treasury shall adopt the revenue collection system developed in (i) above with some modifications depending with the nature of their revenue streams.
- b) Clause 2, 160C(1) substitute the two years with one year.
- c) Clause 2, 160C(2) should be redrafted ensuring the enforcement of the Act. The oversight institutions including the Senate should investigate the matter and recommend stoppage of transfer of funds pursuant to Article 225(3) of the Constitution.

MIN.NO. 449/07/2019: ANY OTHER BUSINESS AND ADJOURNMENT

There being no other business the Chairperson adjourned the meeting at 12:10 pm.

SIGNATURE.....
(CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)

DATE.....

MINUTES OF THE 93RD MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON TUESDAY, 16TH JULY, 2019 AT COUNTY HALL, GROUND FLOOR BOARDROOM, PARLIAMENT BUILDINGS AT 10:00 AM.

PRESENT

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. Moses Wetangula, MP - Member
3. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP - Member
4. Sen. (Dr) Rose Nyamunga, MP - Member
5. Sen. Boniface Mutinda Kabaka, MP - Member
6. Sen. CPA Farhiya Haji, MP - Member

ABSENT WITH APOLOGY

1. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
2. Sen. Aaron Cheruiyot, MP - Member
3. Sen. Mutula Kilonzo Junior, MP - Member

IN-ATTENDANCE

SENATE SECRETARIAT

1. Ms. Emmy Chepkwony - Principal Clerk
2. Mr. Christopher Gitonga - Clerk Assistant
3. Ms. Julie Mwithiga - Fiscal Analyst
4. Mr. Elly Atamba - Research Officer
5. Mr. Stephen Nyakuti - Audio Officer

MIN. NO. 455/07/2019:

PRELIMINARIES

The Chairperson called the meeting to order at 10.20 am and there followed a word of prayer.

MIN.NO. 456/07/2019:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Moses Wetangula, MP and seconded by Sen. (Dr) Ali Abdullahi Ibrahim, MP.

MIN.NO. 457/07/2019: CONFIRMATION OF MINUTES

- a) The minutes of the 80th meeting held on Thursday, 23rd March, 2019 at 9:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. (Dr) Ali Abdullahi Ibrahim, MP and seconded by Sen. CPA Farhiya Haji, MP.
- b) The minutes of the 81st meeting held on Wednesday, 3rd April, 2019 at 11:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. CPA Farhiya Haji, MP and seconded by Sen. (Dr) Ali Abdullahi Ibrahim, MP.

- c) The minutes of the 84th meeting held on Monday, 29th April, 2019 at 2:00 pm were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Moses Wetangula, MP and seconded by Sen. CPA Farhiya Haji, MP.
- d) The minutes of the 85th meeting held on Tuesday, 14th May, 2019 at 10:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Moses Wetangula, MP and seconded by Sen. CPA Farhiya Haji, MP.
- e) The minutes of the 86th meeting held on Tuesday, 21st May, 2019 at 10:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. (Dr) Ali Abdullahi Ibrahim, MP and seconded by Sen. CPA Farhiya Haji, MP.
- f) The minutes of the 87th meeting held on Tuesday, 11th June, 2019 at 10:30 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Moses Wetangula, MP and seconded by Sen. CPA Farhiya Haji, MP.
- g) The minutes of the 88th meeting held on Tuesday, 18th June, 2019 at 10:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Moses Wetangula, MP and seconded by Sen. CPA Farhiya Haji, MP.
- h) The minutes of the 89th meeting held on Thursday, 20th June, 2019 at 9:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. (Dr) Ali Abdullahi Ibrahim, MP and seconded by Sen. CPA Farhiya Haji, MP.
- i) The minutes of the 90th meeting held on Tuesday, 2nd July, 2019 at 10:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Moses Wetangula, MP and seconded by Sen. CPA Farhiya Haji, MP.
- j) The minutes of the 91st meeting held on Thursday, 4th July, 2019 at 10:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Moses Wetangula, MP and seconded by Sen. CPA Farhiya Haji, MP.
- k) The minutes of the 92nd meeting held on Tuesday, 9th July, 2019 at 10:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. CPA Farhiya Haji, MP and seconded by Sen. Moses Wetangula, MP.

MIN.NO. 458/07/2019: CONSIDERATION AND ADOPTION OF THE REPORT ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2019.

The Committee considered and unanimously adopted its report on the Public Finance Management (Amendment) Bill, 2019 with the following recommendations below.

Clause 2 be amended as follows

160A(1) should be replaced with the following:

- (i) the National Treasury, in consultation with Council of County Governors, Commission on Revenue Allocation and Kenya Revenue Authority, shall design and develop a county revenue collection system.

Introduce a new (1A) to read as follows-

- (ii) Every county treasury shall adopt and implement the revenue collection system developed in (i) above with some modifications depending with the nature of its revenue streams.

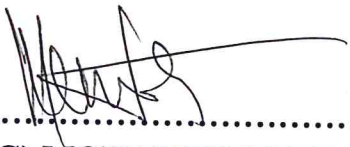
160B(2) include the office of Controller of Budget and Auditor General as the recipient of the bi-annual statements.

160C(1) should be amended to allow the county executive committee member for finance to operationalize the revenue collection system within one year.

160C(2) should be amended to allow the Senate to recommend stoppage of funds pursuant to Article 225(3) of the Constitution in case of failure to adopt and implement the system.

MIN.NO. 459/07/2019: ANY OTHER BUSINESS AND ADJOURNMENT

There being no other business the Chairperson adjourned the meeting at 11:50 am.

SIGNATURE.....
(CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)

DATE.....

